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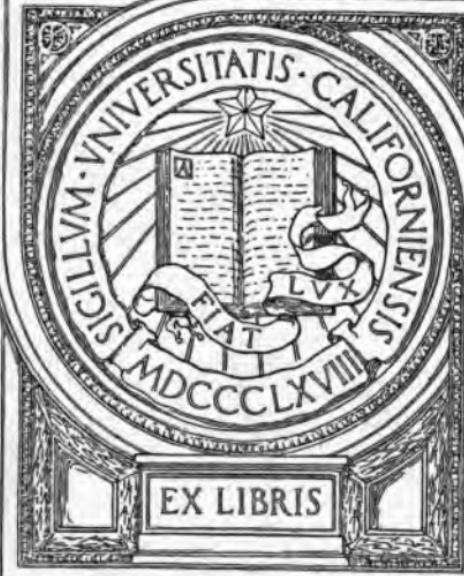
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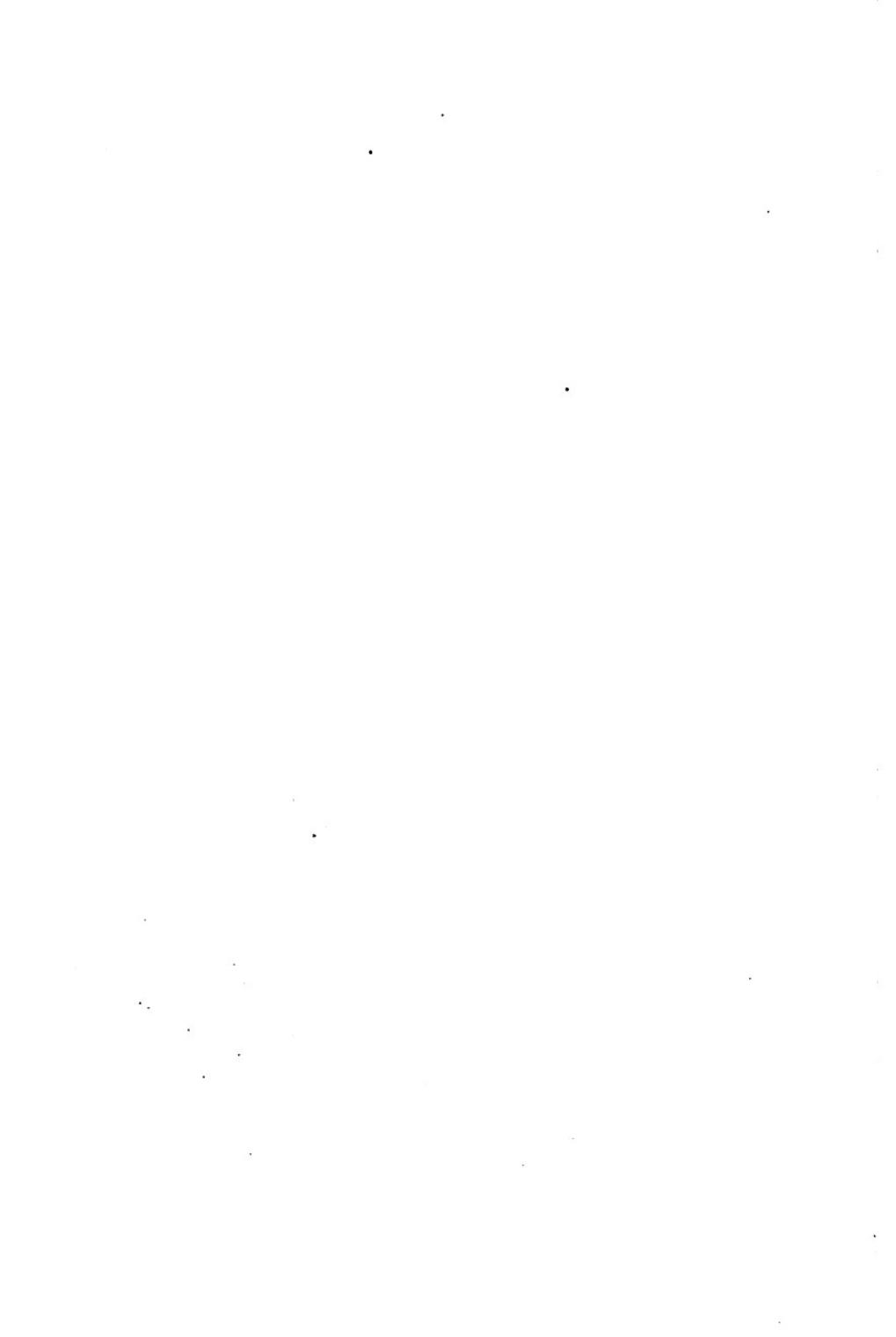
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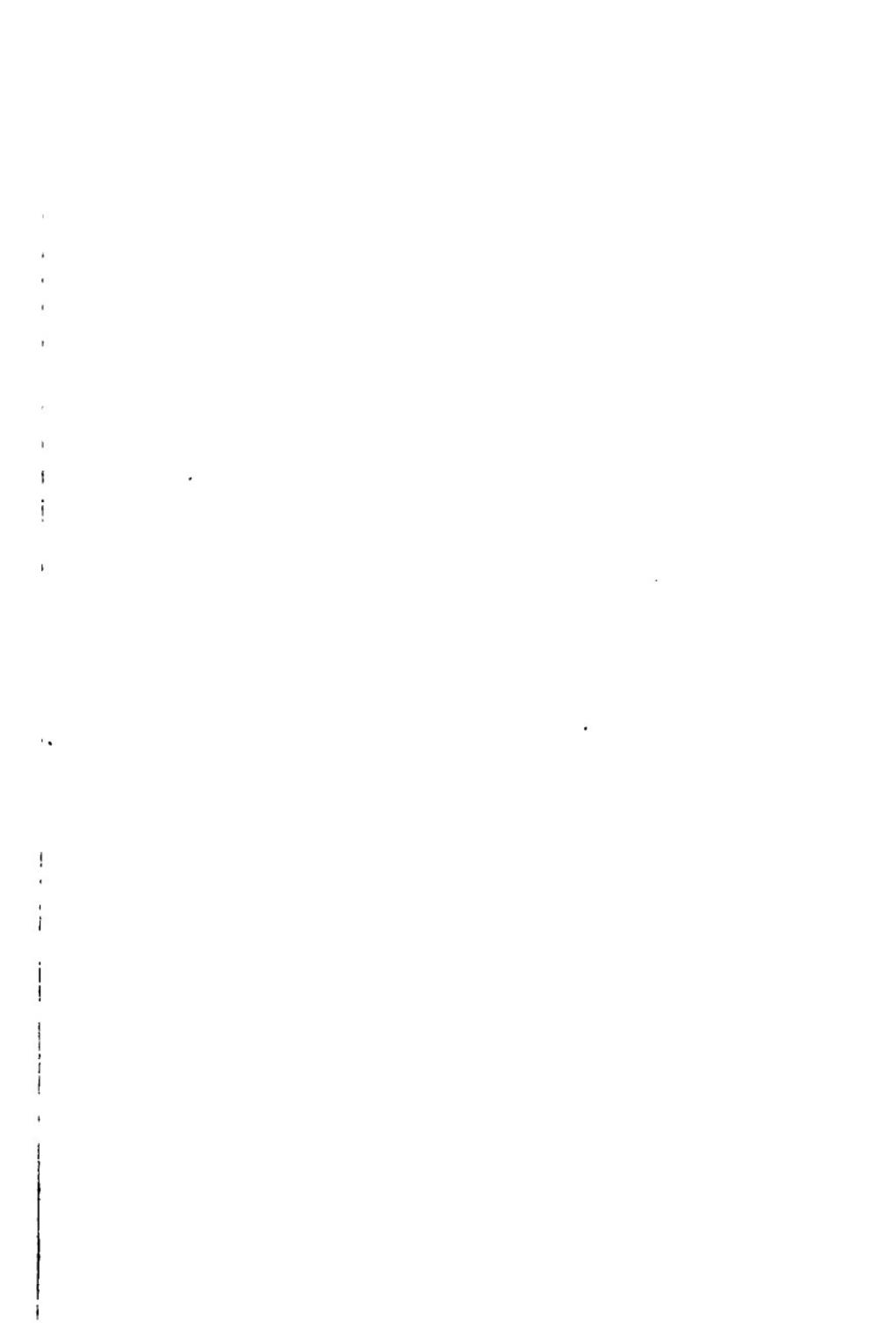


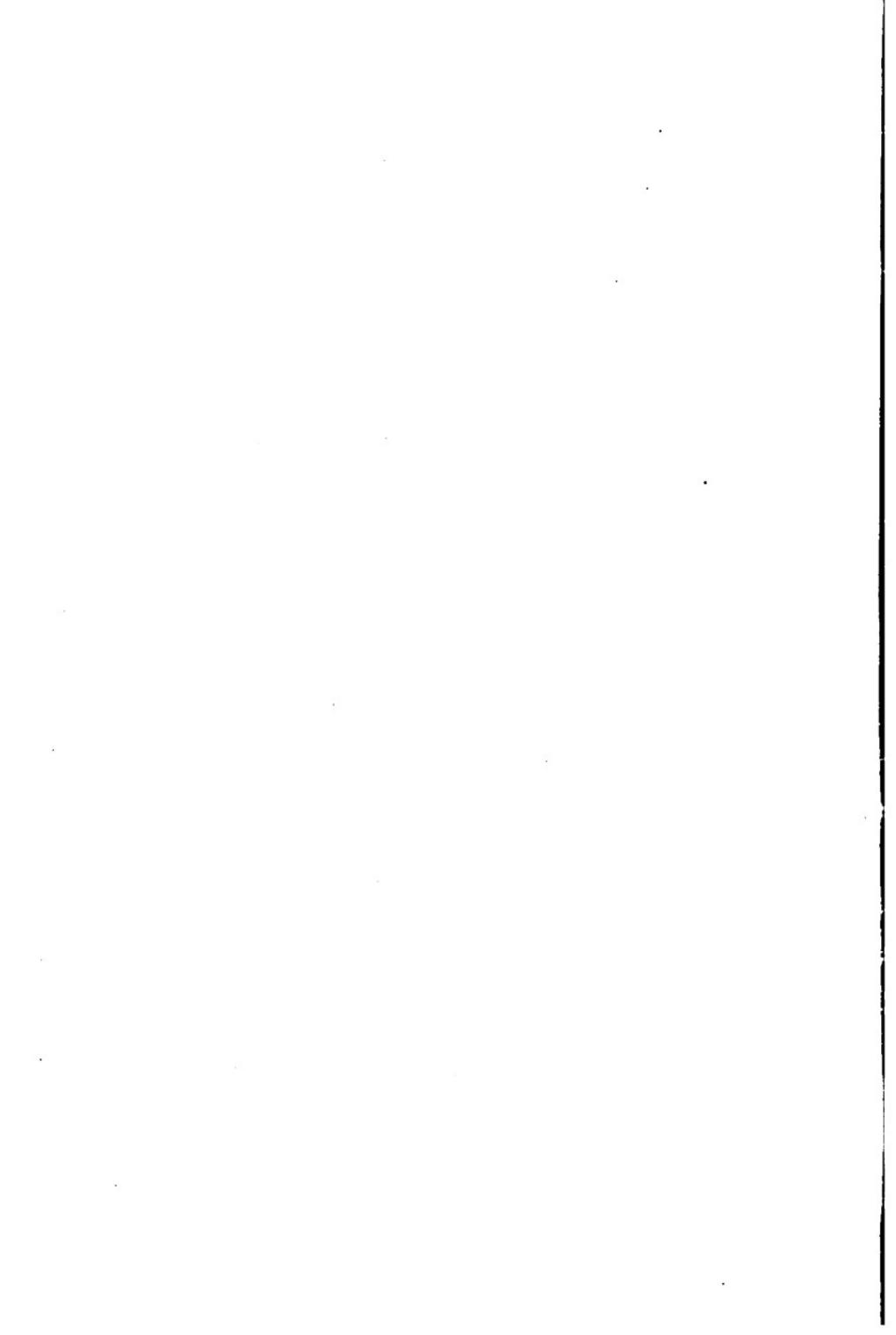
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# GOVERNMENT AND THE PEOPLE

BY

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## PREFACE

The American constitutional system is probably the most complicated scheme of government in the world. It is therefore not strange that the system is imperfectly understood even by intelligent and well-informed American citizens. This book is an attempt to bring to the young people of our country a clearer understanding of our government and our institutions. At this time of world-wide unrest and disturbance, it is especially important that we have set forth clearly and convincingly the plans of governmental machinery as well as those enduring principles which have made possible in the United States the development of the most successful democracy in the world.

Believing that the principles of constitutional government adopted by the founders of our republic are sound, and that "no development of social or industrial life changes a true principle," I have tried to explain adequately these principles and to show how they work in actual experience. However, the object has been, not only to describe the machinery of government, but also to make clear the underlying philosophy of democratic government. My aim has been to write a book that would in the best possible way inspire loyalty to our institutions by making them known, believing that our people, once understanding our political heritage and institutions, will respect them and cherish them.

Good citizenship must begin with an understanding of the principles and ideals of our government. But it does not stop there. The good citizen must put these principles and ideals into practice in the relations of every-day life.

Upon the teachers of our boys and girls falls a goodly share of the sacred responsibility to show by example and to teach what it means to be a good American to-day by living up to the ideals of our forefathers in all that makes for worthy citizenship in our great republic.

JOSEPH R. LONG.

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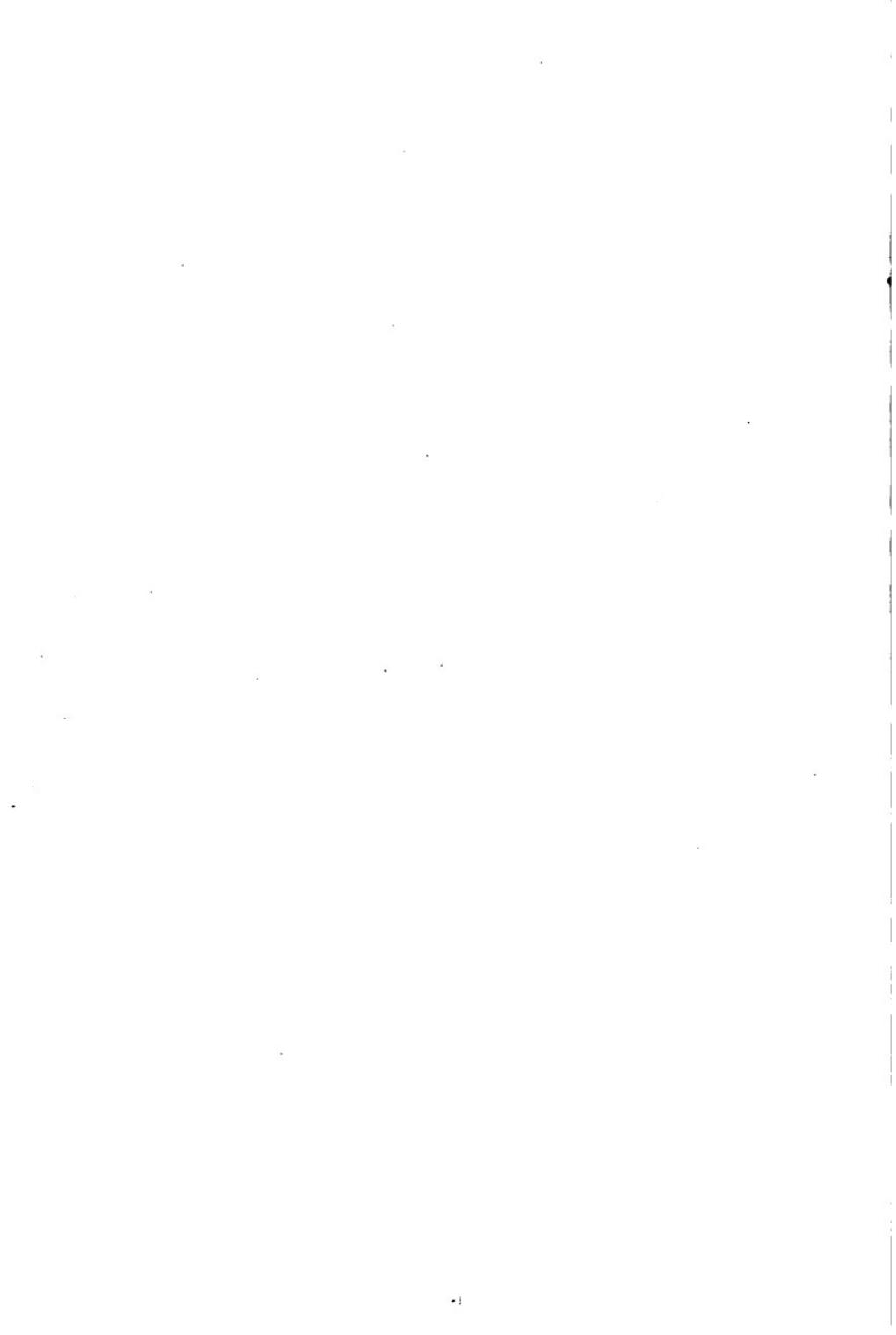
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# **GOVERNMENT AND THE PEOPLE**

## **CHAPTER I**

### **GENERAL INTRODUCTION**

**1. Why the United States Is a Great Nation.**—The people of the United States may well claim to be the strongest, richest, and happiest nation in the world. Their country surpasses all others in the advantages of climate, geographical position, and natural resources. Also, it is of vast extent, stretching from the Atlantic to the Pacific, the United States has an area of over three million square miles (3,025,600), or about three-fourths that of the whole of Europe (3,781,647), while if Alaska and the insular possessions are included, the total area (3,754,771) will about equal that of Europe.

In the character of the American people is found another reason for the high position which the United States has taken among the nations of the earth. The people of the United States are industrious, resourceful, and progressive. Their progress in material things excites the admiration of the world. But their spiritual and moral qualities are even more important than those which have made for their material prosperity. From the beginning these law-abiding and God-fearing people have been lovers of liberty, justice, and the home. While ever ready to assert and defend their own rights, they have, as individuals and as a nation, respected the rights of others.

In this country for the first time in the history of the world the principles of democracy were fully established. There are no favored classes, no lords and nobles living above and upon the great masses of the common people. All men are equal before the law. There are, indeed, inequalities. Some men stand far above the rest in character, wealth, position, and

personal attainments. But these inequalities are not because of birth or special privilege; they depend upon the man himself. In Europe and in Asia there are fixed classes of society; it is almost impossible for a man to rise above the station in life to which he was born. In this country a man's progress from the lowest to the highest position depends upon his own character, ability, and efforts. Not equality in these respects, but equality of opportunity is the governing principle of the American spirit.\* Further, we find in this country beyond most others the spirit of co-operation, the *community* spirit. Individual independence and mutual helpfulness go hand in hand. A people with the American characteristics and spirit would be happy, prosperous, and strong even in a land less favored by nature.

Lastly, the high position of this country and the prosperity and happiness of its people have been due to its form of government. This, perhaps, is not so easy to see. The average person probably gives little thought to this subject, and fails to realize how much his personal welfare depends upon the kind of government under which he lives. One of the objects of this book is to describe the government under which the people of the United States have enjoyed a degree of liberty, prosperity, and national happiness never before known in the history of the world.

**2. The Importance of Government.**—Without government it is impossible for human beings to live together in peace and comfort. Only a person living absolutely alone can do with-

\* "But we must know what democracy is. It does not mean that one man is as good as another; but simply that all are good enough to have a voice in saying who the best ones are. It does not mean that one man is as wise as another, but that all men are wise enough to vote for the wisest and put the reins of power into their hands. Democracy is not Communism—which denies all differences in capacity and attainment. It is not Socialism—which would abolish all differences by government control. Democracy glories in differences, provided they are real and not artificially created. Democracy means that every man shall have a chance to become the finest, largest man he is capable of becoming and to render the greatest possible service to his country and the world."—W. P. Faunce.

out government. From the earliest times we find that wherever two or more persons live together there is always some form of government. The child sees government in the home. Here he is taught to respect the authority of his parents and the rights of his brothers and sisters. When he goes to school he comes in contact with government as administered by the teacher and the other school authorities, and when he enters the larger field of life he encounters the government of the town, the county, the state, and the nation. From the cradle to the grave he finds government all around him.

Persons who have always lived in a well-governed country like the United States can hardly realize how important their government is to them. We take as a matter of course the blessings of liberty which we enjoy with little thought for the government which makes these blessings possible. But to appreciate how much we owe to good government, we have only to look at other countries which are or have been without good governments. Some of the most favored portions of the globe, rich in natural resources and climatic advantages, are undeveloped and their inhabitants are miserable simply from the lack of good government. Such are Mexico, Hayti, and some parts of Asia. The condition of Russia after the World War shows how government may affect a great and rich country.\* On the other hand, some countries, not greatly favored by nature, are inhabited by prosperous and contented peoples, largely because with a good government life becomes possible and attractive.

**3. Some Definitions.**—We must now define some terms used in discussions of government. The word *govern* is derived

\* It is related of Confucius that on one occasion while journeying with some of his disciples he came upon a woman weeping at a grave. When asked the reason of her grief she replied: "My husband's father was killed here by a tiger, and my husband also, and now my son has met the same fate." Then, on being asked why she did not leave so fatal a spot, she replied that there was there no oppressive government. "Remember this," said Confucius to his disciples, "remember this, my children: oppressive government is fiercer and more feared than a tiger."

from the Latin word meaning to *steer* or *guide*, as a ship, and a governor is a pilot or steersman. From this comes the word *government*, which means the administration of the affairs of the state. A government, or the government, is the agency by which government is administered, that is, the persons who carry on the work of government. That branch of knowledge to which the subject of government belongs is known as *political science*, or the science of politics, or, more shortly, as "civics." A *state* is a body or society of persons organized as an independent political unit. It is in the nature of men to associate together for purposes of common defense and mutual advantage. As Aristotle said, "man is a political animal." Any association of persons united under some form of government and independent of other peoples, constitutes a state. Usually a state occupies some definite territory which it claims as its own, and without such territory a civilized state could not exist. However, nomadic tribes, occasionally to be found, which preserve their organization while wandering about from place to place, may be considered states in a political sense though without a fixed abode. The term state as here used should not be confused with the same word meaning one of the members of the United States, which is not a fully independent state in the political sense.

The term *nation* is often used as synonymous with state, and this is its ordinary meaning in political science. But primarily a nation is a people of the same race, with common ancestry, language, and traditions. In this sense a nation, unlike a fully developed state, need not have any territory of their own. Thus the Jews may be spoken of as a nation, although they have no country of their own but are scattered throughout the earth. The British Empire is a state and comprises many nations in this sense; but using the term in its secondary or political sense, the British Empire is a single nation. For the primary meaning of the term nation the word *race* is commonly used. The term *people* is often used in the sense of nation or state.

4. **Sovereignty.**—By *sovereignty* is meant the sum of all political power vested in an independent state. A state is sovereign when it is politically independent of all other states and has complete power of self-control. It is a principle of international law that all independent states are politically equal, however much they may differ in population, resources, and power. They are all equally sovereign. If a country is in any respect subject to the control of any other country, it is to that extent not fully sovereign. The tiny republic of San Marino, with an area of thirty-three square miles and a population of about 15,000, is a sovereign state; but the rich island of Cuba is not absolutely sovereign because of the limited control retained by the United States over its affairs. The person or persons in whom the sovereign powers of a state are vested are the sovereign or sovereigns.

If national sovereignty is vested in a king, emperor, czar, or other ruler, who rules as he sees fit, the government is an *autocracy*, and the ruler is an autocrat. Where the sovereignty is in a superior class of persons, the government is an *aristocracy*, and where the powers of government are concentrated in a few persons, whether of the nobility or of the common people, the government is an *oligarchy*. Where the sovereignty is vested in the people as a whole, who, in one way or another, exercise the powers of government, the government is a *democracy*. It is possible for a government to be nominally democratic but actually controlled by a small group of professional politicians, who, while governing in the name of the people, in fact constitute an oligarchy.

5. **The Forms of Government.**—There are two principal forms of government, monarchical and republican.

A monarchy is a state in which the ruler is a hereditary monarch, whether called king, emperor, prince, or what-not. More countries have had the monarchical form of government than any other. The power of the monarch has varied at different times and in different countries. In an absolute monarchy the personal will of the monarch is supreme, and the government

is an autocracy. The monarch has over his subjects the power of life and death. Such extreme power has often been exercised by Oriental monarchs, and by the early czars of Russia. In a limited monarchy the power of the monarch is restricted by the constitution of the country. Practically all modern monarchies are limited, or constitutional, monarchies. In no enlightened country has the monarch absolute power.

A republic is a state in which the ruler, or rather the executive, is chosen directly or indirectly by the people. A republic is almost necessarily a democracy, since the people rule, but a democracy is not necessarily a republic. A democracy may have a monarchical form of government. All free countries are democratic, that is, in them the sovereignty is vested in the people, but the form of the government may vary. The form of the government—that is, the manner in which the people exercise their power—is not the material thing in determining whether or not the government is democratic. The essence of democracy consists in the fact that the power belongs to the people, however they may exercise it. In a democracy the officers administering the government are the agents or servants of the people, by whatever name they may be called. Thus Great Britain is a democracy, though the formal head of the government is a king. As a rule, however, the head of a democracy is a president, as in France, the United States, and the republics of South America.

6. **The Forms of Democracy.**—Democracy takes two principal forms, (1) pure democracy and (2) representative democracy. In a pure democracy the people rule themselves directly. They meet in popular assemblies and make laws, settle private controversies, decide public questions, elect public officers, and administer the affairs of the state or community generally. A perfect example of a pure democracy may be found in a school literary society, or in a social club, or in some churches, in which every member has the right to vote, to enter into the public discussions, and to hold office. This form of government is not possible except where the number of persons con-

cerned is small. A large population cannot meet in a single assembly, and, moreover, government requires deliberation, and a crowd cannot deliberate.

The *pure form of democracy* has seldom been employed by states, and then only on a very small scale. None of the great nations of the ancient world, Egypt, Babylon, Assyria, the Roman Empire, etc., were democracies. The early city-states, Athens and Rome, were pure democracies so far as their own citizens were concerned, though not as to the population as a whole. Political privileges were reserved for the citizens, and a large part of the population were slaves or non-citizens. The popular assemblies of Athens and Rome were composed of the comparatively small number of citizens. In modern times the best known if not the only examples of pure democracy are afforded by the government of some of the smaller cantons of Switzerland and government by town meetings in New England. Direct democracy is impossible for any population large enough to constitute a state or nation in any real sense. Democracy on a large scale was made possible by the invention of the principle of representation.

A *representative democracy* is a government conducted by delegates or officers chosen directly or indirectly by the people. In a representative democracy the citizens do not act in person but through proxies or representatives chosen by them. In a pure democracy the citizens cast their votes in the popular assembly; in a representative democracy the votes are cast at voting places conveniently distributed throughout the country. In a pure democracy the people themselves make laws and administer the government; in a representative democracy the people merely vote for public officers, or perhaps on certain general questions of policy or administration. All modern democracies of national size are of the representative type.

**7. Constitutional Government.**—All enlightened countries have constitutional governments. Constitutional government is government according to fixed principles, as opposed to government arbitrarily administered according to the personal will

of the ruler. A constitution\* is the fundamental law of a nation, in accordance with which the government is organized and its powers are exercised. It is the sum of the fundamental and permanent principles, whether written or unwritten, under which the state is governed.

All governments worthy of the name are organized and administered according to some permanent principles, such as those determining the succession upon the death of the ruler, or the national religious or other customs which even uncivilized peoples recognize as binding upon ruler and people alike. But this is not what is meant by constitutional government. It is only when the fundamental customs and principles are sufficiently numerous and definite to constitute a system or scheme of government, with clearly defined limitations protecting the people from the exercise of arbitrary power, that it is proper to dignify them with the name of constitution. At present all civilized governments are constitutional governments, though some countries have more fully developed constitutions than others. The trend of political history has been away from arbitrary government to constitutional government, and with the development of constitutions men have everywhere progressed toward freedom.

A constitution may be written or unwritten. A constitution is written when all its provisions are formally reduced to writing; a constitution is unwritten when some or all of its provisions have not been set forth in definite and authoritative written form, but exist only in the form of statutes, judicial declarations, or settled national purposes or institutions. The Constitution of the United States is the most notable instance of a written constitution. At present most of the civilized nations have written constitutions covering more or less completely their schemes of government. Some of these, notably those of South America, are to a considerable extent based upon the Constitution of the United States.

\* In this book the word "constitution" is printed with a capital when it refers to the Constitution of the United States, but with a small letter when it refers to the constitution of a state, or is used in a general sense.

Modern constitutional government began and was largely developed in England, significantly known as "the mother of parliaments." The British constitution is the most important example of an unwritten constitution. It consists of the body of principles found in ancient customs, precedents, royal grants, statutes, and the like, which by prescription or general acceptance have become recognized as fundamental and binding on the government itself. Important elements of the British constitution are the great historic documents, the Magna Charta (1215) and its various extensions, the Habeas Corpus Act (1679), and the Bill of Rights (1688). Other important elements are trial by jury, the principles of the common law relating to personal liberty, and modern cabinet government.

An unwritten constitution is possible only in an old and long-settled country with well-established national habits. It is a thing of slow growth, developing gradually out of the life of the people, and is an impressive expression of that life. Even in countries with written constitutions, additional principles are gradually added or changes are made by custom which may be termed unwritten amendments to the constitution. A number of these are found in the constitutional system of the United States, for example, the tradition against a third term for the President, the change in the function of presidential electors, the party system, the principle of "senatorial courtesy," etc.

**8. Constitutional and Statute Law Distinguished.**—No distinction in constitutional law is more important than that between the constitution and ordinary legislation. By a failure in practice to observe this distinction constitutional government may be broken down and freedom in a democracy become endangered.

The constitution is the organic or fundamental law of the state. It institutes the government, and confers, defines, or limits its powers. The adoption of a constitution is the solemn and deliberate act of the sovereign people by which they declare the principles upon which they choose to be governed.

It should contain only the fundamental and permanent principles by which the several departments of the government are to be guided, and, from its nature, should rarely need amendment. A statute, on the other hand, is enacted by the legislature, which is not a sovereign body but is itself instituted by the constitution. It does not necessarily embody any principle, but is usually merely an application to the ordinary life of the people of the principles laid down in the constitution. There is no necessary permanence about it, for it deals with the shifting conditions of the day. A statute may be repealed or amended by the legislature at pleasure; a constitution can be changed only by the sovereign people who ordained it. From the difference in nature between constitutional and statutory law it would seem plain that the two kinds of law should not be combined in the same instrument.

**9. Majority Rule.**—It is a fundamental principle of democracy that the will of the majority shall prevail. In a constitutional democracy, however, this does not mean the unrestrained rule of the majority. Government by the unrestrained majority is not real democracy but mob rule. If individuals and minorities have no rights which the majority are bound to respect, there is no freedom, but only tyranny. "Liberty to be enjoyed," said Edmund Burke, "must be limited by law, for where law ends there tyranny begins; and the tyranny is the same, be it the tyranny of a monarch or of a multitude; nay, the tyranny of the multitude may be the greater, since it is a multiplied tyranny."

The only true democracy is government by the majority according to fixed principles established by the majority itself. It is government for the benefit of all, and not merely of the majority. It depends upon the observance of certain and permanent principles of justice found in the constitution, which expresses the real and permanent will of the people. It is the constitution that safeguards the rights of individuals and of the minority by holding in check the temporary will of the people swayed by the passion or exigencies of the moment. Unless the majority temporarily in power are willing or can

be made to abide by the constitution, democracy must be a failure, and political liberty is impossible. As has been said: "The supreme test of civil liberty is our determination to protect an unpopular minority in time of national excitement."

**10. The Best Form of Government.**—Of the different forms of government, which is the best? In an absolute sense there is no best form of government. The best government for any people is that government which best promotes their happiness and prosperity, and what might be best for one people might not be best for another. A primitive people need to be ruled from above; the only form of sovereignty which they can understand is a sovereignty vested in some superior person or persons. A king or chief is for them a necessity. A people without political enlightenment could not understand democracy.

Democracy is the most difficult of all kinds of government. A successful democracy is possible only for a people who are capable of self-government. Unless a people have sufficient self-restraint and political intelligence to be intrusted with the difficult task of governing themselves, the establishment of a democratic government by or for them would be fatal to liberty. When a people not capable of self-government are left to govern themselves they soon lapse into anarchy, or fall a prey to a despot, or are conquered by some stronger power.

Democratic government in the United States has been successful, but except in France, Switzerland, the British Empire, and some of the South American republics, it has either not been tried or has not yet proven successful. It is a product of Anglo-Saxon civilization, and, with the exceptions just stated, has never been put into successful operation outside the English-speaking world. For most other peoples some other form of government is more suitable.

### Questions

1. Discuss the three main reasons for the prosperity and happiness of the people of the United States? Is there any danger that they may lose either of these advantages?
2. Where did you get your first notions of government? Have you ever been anywhere where there was no government?

3. Define the word "govern." What is a "state," a "nation," a "race"? What is meant by "sovereignty"? Distinguish between an autocracy, an aristocracy, an oligarchy, and a democracy.
4. What are the two principal forms of government? Define each. Which kind is found in the United States; in England; in Italy; in Japan?
5. What is the difference between a pure and a representative democracy? Which do we have in the United States? Would the other kind work here? Give an example of the other kind. Is the American form of democracy ancient or modern?
6. What is constitutional government? What is a constitution? Do all countries have constitutional government? Give examples of early written constitutions. What is the most notable instance of a written constitution? What kind of constitution has Great Britain? Would this kind be practicable in the United States?
7. Is there a difference between constitutional law and statute law? Ought statute law to be put into the constitution?
8. Would a country be free in which the majority had absolute control to do whatever they voted to do? For whose benefit should the majority rule? What protects the minority? What is a "true democracy"?
9. What is the best form of government? Would democracy be a good form of government in the Philippines; in Arabia? In what countries has democracy been tried and found successful?

## **PART I**

### **THE AMERICAN CONSTITUTIONAL SYSTEM**

#### **CHAPTER II**

##### **HISTORICAL DEVELOPMENT**

**11. The Beginnings of Liberty in England.**—The liberty which the people of the United States enjoy was not won in any single war or revolution, but is the fruit of centuries of struggle. For its beginnings we must go back to England. The civilization and political institutions of this country are of English origin, and American liberty is the outcome of a struggle which began in England soon after the Norman Conquest (1066). While the people of other countries were sunk under the burden of autocracy, Englishmen were laying the foundations of democracy and personal freedom. The first great landmark in this struggle was the Magna Charta, which the barons wrested from King John in 1215. Some of the guarantees contained in this famous instrument are preserved in the Constitution of the United States. In the main the struggle was for the rights of the people as against the king and the nobility. This struggle was still going on when the first English settlements were made in America, early in the seventeenth century.

**12. Colonial Government.**—The several English settlements on this continent differed somewhat in the details of their social, economic, and religious life, but in general character the people of the thirteen colonies were essentially one. They were bound together by community of race, language, and customs. But the colonies were not united by any political tie save that of their common dependence upon Great

Britain. Each of the thirteen colonies was separately established by the British Government, and politically they stood apart. If the British Government had voluntarily severed the bond between it and the colonies, they would at once have become independent sovereign states in every sense of the term.

At the time of the Declaration of Independence (1776) each of the colonies had a well-organized government of the modern type, with legislative, executive, and judicial departments. All had what were in effect written constitutions. The legislature of a colony had power to legislate in all matters affecting only the colony. Their powers were limited by the charters, patents, and instructions, coming from the crown.

**13. The Beginnings of Union.**—Long before the Revolution some slight attempts at union were made by various colonies for purposes of defense against the French or the Indian tribes, but the first general union of the colonies was for the purpose of remonstrance against the aggressive policy of the British Government under George III, which began about the close of the French and Indian War (1756). In 1765 nine colonies sent delegates to the "Stamp Act Congress," which met in New York to remonstrate against the stamp tax of that year. This congress declared for the principle that there could constitutionally be no taxation without representation, that is, that the colonists should not be taxed by Parliament in which they had no representatives. Later other statutes increased the friction between the colonists and the British Government.

In 1774 a congress, representing all the colonies except Georgia, met in Philadelphia in Carpenter's Hall. This body, known as the *First Continental Congress*, adopted a declaration of rights and a petition to the king for redress. This congress did not intend separation from Great Britain, but their petition to the British Government was their last formal appeal for relief. Notwithstanding the eloquent pleas of Chatham and Burke in behalf of the colonists, their appeal was unheeded. War and independence followed.

**14. Revolutionary Government.**—Soon after the outbreak of hostilities another congress, known as the *Second Continental Congress*, met in the State House at Philadelphia, on May 10, 1775. All the colonies were represented. This congress was a purely revolutionary body. Its powers were undefined. At first there was no written constitution. The main business of the Congress was to carry on the war, though some other general powers were exercised, such as the establishment of a continental currency and a general post-office. During the period of the Revolution, Congress was the sole organ of the government of the United States. This Congress adopted the Declaration of Independence and carried the war to a successful end.

**15. The Articles of Confederation.**—It was soon seen that a more definite form of organization was necessary, and Congress adopted articles of union, which went into effect upon ratification by all the states in 1781. These articles, known as the Articles of Confederation, formed the first Constitution of the United States. They did not provide for a real national government, but only for a “firm league of friendship” between the thirteen states, which expressly retained their separate sovereignty. It was, in fact, a league of nations.

The government so provided for was almost too elementary to be called a government at all. All its powers were vested in a congress composed of delegates from all the states. There were no separate executive and judiciary departments. The powers conferred upon Congress were few in number. There was no power to levy taxes, or to raise troops, or to enforce the powers granted. Congress could request the states for money or troops, but could not make them furnish either. It had power to pass resolutions on a few subjects, but no power to carry them out. It dealt only with the states as such, having no jurisdiction over individuals.

Such a government was too feeble to live, and it never amounted to much. While the war was going on the people of the states were held together by the pressure of the common danger, but when the war ended they soon fell apart. Con-

gress was unable to maintain its authority. Its requisitions upon the states were freely disregarded. It was impossible to obtain money to carry on the operations of government, or to pay principal or interest of the public debt. The continental currency became practically worthless. The country fell into a deplorable condition. The period from the close of the war in 1783 to the adoption of the Constitution, in 1789, has been aptly called the "critical period of American history." The main trouble was the weakness of the central government. These conditions led to the adoption of the Constitution of the United States, providing for an adequate national government.

#### **16. Preliminaries to the Constitutional Convention of 1787.**

—The first steps toward the establishment of better relations between the states were taken by Maryland and Virginia, which sent commissioners to Alexandria, Virginia, in March, 1785, to frame an agreement as to the navigation of the waters subject to their common jurisdiction. The commissioners conferred also with Washington with the final result that it was decided to call all the states into conference to consider some uniform system of legislation on the subject of commerce. In response to this call twelve commissioners, representing five states, met at Annapolis, Maryland, in September, 1786. Owing to the fact that so few states were represented it was decided to call another convention to meet at Philadelphia. An address was sent to the states urging them to appoint commissioners to meet to revise the Articles of Confederation so as to render them adequate to the exigencies of the Union. Congress, acting upon the recommendation of the Annapolis convention, issued a similar call, and the legislatures of all the states but Rhode Island chose delegates to attend the convention.

#### **17. The Constitutional Convention (1787).**—Seventy-three delegates were appointed by the state legislatures, but only fifty-five attended the convention. Several of those in attendance afterward withdrew, and only thirty-nine signed the Constitution as finally drafted. As a rule the states sent their



*After a painting by Sidney M. Chase.*

**THE CONSTITUTIONAL CONVENTION, PHILADELPHIA, 1787.**

**George Washington, presiding; Alexander Hamilton, speaking; Benjamin Franklin at the right of picture in foreground.**

best men, and many of the ablest men in the country were in the convention. The delegates represented most of the leading occupations of the times except the ministry and the profession of arms. There were no professional soldiers, though some of the delegates had served in the Revolutionary War. Washington, though one of the great generals of history, was now a Virginia gentleman and farmer. At a time when a college education was within the reach of few, twenty-nine of the members were college men, alumni of Harvard, William and Mary, Yale, Princeton, Columbia, Oxford, Glasgow, and Edinburgh. Washington and Franklin were not college men. Most of the members had had experience in public life; over forty had been members of Congress, and eighteen were members at the time of the convention. Several were, or had been, governors of their states; others had been judges; eight were signers of the Declaration of Independence. Some were poor, others were rich.

The average age of the members was forty-three years. Franklin, the oldest, was eighty-one; Dayton, of New Jersey, was twenty-seven. Washington was fifty-five. The most famous men in the convention were Washington and Franklin. Neither took an active part in the debates, but both, and especially Washington, exerted a commanding influence in steady-ing the deliberations. The profoundest thinkers were Alexander Hamilton, of New York, and James Madison, of Virginia. Hamilton was thirty years of age and Madison thirty-six. In all their deliberations the delegates showed a lofty and pa-triotic purpose. There was no self-seeking nor favoring of any particular class. Madison records that: "There never was an assembly of men charged with a great and arduous trust, who were more pure in their motives or more anxiously devoted to the objects submitted to them."

**18. The Work of the Convention.**—The convention met in Independence Hall in the room in which the Declaration of Independence had been signed eleven years before. The first session was held on May 25, 1787, and the final session on

September 17, on which day the Constitution was signed. Washington was unanimously chosen president of the convention, and the influence of his personality and character was beyond estimation. He favored the establishment of a strong national government. It is told that, on one occasion when half-way measures were suggested through fear that the people might not understand or approve real reform, Washington, "in tones unwontedly solemn with suppressed emotion," rebuked such moral cowardice with these noble words: "It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and honest can repair; the event is in the hand of God."

The convention's task was a difficult one. The main problem was to frame a constitution for a central government acting directly upon the individual citizens, without too much impairment of the sovereignty and independence of the states, or undue interference with the liberty of the individual citizen. The respective rights of the large and the small states were to be preserved, and the conflicting commercial and economic interest of different sections of the country taken into account. The principal conflict was between those who believed that there should be a strong national government and those who jealously contended for the rights of the separate states.

In a convention composed of men of different qualities and temperaments, and representing conflicting views, it was to be expected that serious differences of opinion would arise, and the magnitude of the task before the convention and the novelty of some of the questions presented gave ample occasion for these differences. At times it seemed that no agreement could be reached. Several members left in disgust when their views were rejected. But by wise compromises the Constitution was made possible. If every member had rigidly insisted upon his own views, a deadlock would have resulted: there

would have been no Constitution, and confusion and perhaps war between the states, or conquest by a foreign power, might have followed. As finally framed the Constitution did not exactly embody the views of any one member, but it expressed the collective wisdom of the body.

**19. Signing the Constitution.**—At the close of the convention thirty-nine members signed the Constitution, and several others would have signed had they been present. While the last members were signing, Franklin, looking toward the president's chair, at the back of which a rising sun was carved, observed that painters had found it difficult to distinguish in their art a rising from a setting sun. "I have often and often," he said, "in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the president without being able to tell whether it was rising or setting; but now at length I have the happiness to know that it is a rising and not a setting sun."

**20. Adoption of the Constitution.**—By the terms of the Constitution ratification by conventions of nine states was to be sufficient to make it effective in the states so ratifying. These conventions were elected by the people of the several states. New Hampshire ratified as the ninth state on June 21, 1788. Virginia and New York soon followed. The other two states, Rhode Island and North Carolina, did not ratify until shortly after the Constitution had gone into effect and the new government was in operation. Only in Massachusetts, New York, and Virginia was there any serious contest over ratification, the principal objections being that the Constitution gave too much power to the federal government, and the absence of a bill of rights protecting the individual from oppression by the government. March 4, 1789, was the date set by the expiring Congress for the new government to go into effect, though the new Congress, elected under the Constitution, did not secure a quorum until some days later. Washington was unanimously chosen president, and took the oath of office in New York, then the seat of the government, on April 30, 1789. The first Con-

gress, in 1789, passed a judiciary act establishing the federal courts, and organization of the new government was complete.

**21. Sources and Originality of the Constitution.**—In framing the Constitution the members of the convention drew largely from the experience of the past. They were not theorists bent on trying out some new scheme of government of their own invention, but level-headed men of affairs, thoroughly acquainted with the evils from which the country was suffering and well qualified by experience to work out some practical remedy. Many of them had had long experience in public life, and some of them had been members of the conventions which framed the new constitutions of the states. Scholars such as Madison, Ellsworth, and Wilson were able to present to the convention the teachings of the political history of other nations.

The main features of the Constitution were drawn from colonial experience. Written constitutions, although almost unknown in Europe, had long been familiar in America. The various colonial charters and the new state constitutions afforded abundant material for constitution-making. The Articles of Confederation furnished a starting point for a federal Constitution. The convention wisely used what experience had proved to be good rather than to make experiments. The Constitution stands to-day substantially as the convention made it because it was built upon the sure foundation of experience. “Behind the Constitution there stood the thirteen Articles of Confederation, behind these the constitutions of the original states, behind these the colonial charters, behind these the charters of English trading companies, behind these the charters of English cities, towns, and boroughs, and behind these the primitive institutions of the days of Alfred the Great.” \*

But the convention gave to the world one grand new principle of constructive political genius, namely the principle of *federation*, upon which was established a national government

\* H. L. Carson in Address before the American Bar Association, 1920.

acting directly upon the individual, without interfering with the separate existence of the states. It was the introduction of this principle that transformed the league of nations existing under the Articles of Confederation into a national government. Another great achievement was the establishment of an independent federal judiciary, with jurisdiction of questions of constitutional law. Without the power of the courts to declare void statutes which violate the Constitution, constitutional limitations are vain, and the Constitution itself could hardly have been preserved.

22. **The Nature of the Constitution.**—From the adoption of the Constitution to the Civil War two radically different theories were held in this country as to the nature of the Constitution.

According to one theory the Constitution was a mere compact or agreement between sovereign states, by which they established a central government for certain specified purposes, without, however, impairing the individual sovereignty of the states or uniting their peoples into a single nation. Each state has the right to judge for itself as to the extent of the powers of the central government and to treat as null and void any act of that government deemed by the state to be unauthorized by the compact. This was the doctrine of *nullification*. Further, a breach of the compact by some of the states as parties thereto releases the other states from their own obligations under the compact, and in extreme cases might justify withdrawal from the Union. This was the doctrine of *secession*. This may be called the *states' rights theory*. According to the other theory, the people of the United States constitute a single sovereign nation, who by the adoption of the Constitution established a national government, which is the sole judge of its own powers. Neither nullification nor secession is lawful according to this theory. This may be called the *national theory*.

The national theory was held by some of the greatest of American statesmen, including Washington, Hamilton, and Marshall, but there can be no doubt that for many years after

the adoption of the Constitution the great majority of the people of the country, whether consciously or unconsciously, adhered to the states' rights theory, though without always admitting the extreme applications of this theory, nullification and secession. The political writings of the first half-century abound with references to the Constitution as a compact. One of the strongest statements of the compact theory is found in the famous Kentucky Resolutions of 1798, written by Thomas Jefferson. Even the right of secession seems to have been generally admitted, and threats of secession on various occasions were received with tolerance, if not indifference.\* For a long time there was no general national sentiment; the citizen's first affection was for his own state, and to her his primary allegiance was due. State citizenship outranked national citizenship. It was only when the issue was finally settled by the result of the Civil War that the compact theory was abandoned and the permanence of the Union was assured.

**23. The Development of Nationality.**—The Constitution established a national government *on paper*. But a paper constitution amounts to little unless the people, in fact, constitute a nation. Probably the Constitution would not have succeeded had not various causes and influences gradually welded the peoples of the several states into a single nation. Among these may be mentioned: the improvement in modes

\* In the early days of the republic threats of secession were quite common, even in the debates in Congress. Such threats came from prominent New Englanders opposed to the embargo of 1807, the War of 1812, and the admission of Louisiana and Texas. South Carolina threatened to secede on account of the tariff acts of 1828 and 1832. Even the great nationalist Daniel Webster declared, in 1851: "I have not hesitated to say, and I repeat, that if the Northern states refuse, wilfully and deliberately to carry into effect that part of the Constitution which respects the restoration of fugitive slaves, and Congress provides no remedy, the South will no longer be bound to observe the compact." The right of a state to withdraw from the Union at pleasure is expressly declared in Rawle's "View of the Constitution," published in 1825. The author was an eminent Philadelphia lawyer. There is some reason to think that this book was used as a textbook at West Point during the cadetship of Robert E. Lee and other Confederate leaders, but the evidence is inconclusive.

of communication and travel, which has brought the people of the country closer together; the interchange of population by the removal of citizens from one state to another; the immigration of millions of foreigners, to whom this country is the United States, and not a union of states, and to whom talk of states' rights would be almost meaningless; the admission by Congress of new states largely outnumbering the original "sovereign" states; foreign wars waged by the United States, which united the people, and even the Civil War, which removed the main cause of division; the great expansion of business and industry, especially in recent years, commerce and manufacture paying little attention to state lines. These and other causes have operated to unite the people of the United States into a nation.

The Constitution itself has been a strong bond of union. All state and national legislators and officers are bound by oath or affirmation to support it, and in time also the people became attached to it just as to the national flag. Much, however, depended upon the interpretation of the Constitution by the Supreme Court. Fortunately for nationalism, this court from the beginning has taken the position that the Constitution is not a mere compact between sovereign states, but the constitution of a national government, and that the people of the United States constitute a nation. As early as 1801, when national sentiment was feeble and the fate of the Constitution largely depended upon the spirit in which it should be interpreted, John Marshall, a strong federalist and the greatest of all American judges, became Chief Justice. Without straining its terms, Marshall, at the head of the court, interpreted the Constitution upon the theory that it was intended to succeed. As its greatest interpreter and coming at a time when its success was doubtful, Marshall ranks as one of the great makers of the Constitution. "It is scarcely an exaggeration," says Mr. Bryce, "to call him, as an eminent American jurist has done, a second maker of the Constitution."

### Questions

1. Where and when did the development of American liberty begin? What was the political condition in England when the first English settlements were made in America?
2. What bound the thirteen American colonies together? Was there any political connection between them? What kind of governments did they have in 1776?
3. Mention some of the steps by which the colonies were drawn toward union. What was the difference in essential character between the First and the Second Continental Congress?
4. What was the government of the United States during the Revolution? When were the Articles of Confederation adopted, and what was the nature of the government under the articles? Why did it fail?
5. What was the Alexandria conference; the Annapolis conference? What great convention came from these? How were the delegates appointed?
6. When and where did the constitutional convention meet? How long did it last? How many delegates attended and who presided? Name some of the leading delegates. What did Washington say when a makeshift constitution was proposed?
7. What was the main problem before the convention? Was the Constitution as framed fully satisfactory to all the delegates? How many signed the Constitution? What did Franklin say on that occasion? What is "Constitution Day"? Does your school celebrate it?
8. How was the Constitution ratified? What part did the people take in adopting it? When did the government of the United States under the Constitution go into effect?
9. Where did the framers of the Constitution get most of their ideas from? Did they have any models to go by? Mention some of the sources of the Constitution. What grand new principle is found in the Constitution? Mention another great achievement of the convention.
10. What two theories were held before the Civil War as to the nature of the Union established by the Constitution? What theory did Washington hold; Jefferson; Chief Justice Marshall? Which theory finally prevailed?
11. Before the Civil War which came first, national or state citizenship? Name some of the things that have contributed to the development of the people of the United States into one nation. What part did the Supreme Court play in this development? Who has been called a "second maker of the Constitution"?

## CHAPTER III

### GENERAL DESCRIPTION OF THE AMERICAN GOVERNMENT

**24. The Constitution.**—The Constitution of the United States is a short instrument. It consists of the Preamble, the seven original articles, and nineteen amendments. The entire instrument may be read through in half an hour. The Preamble is merely an introduction, stating that the people of the United States have ordained and established the Constitution for the general purposes enumerated. No power is granted in the Preamble to the federal government, but all its powers are derived from grants in the body of the instrument. The first three articles relate to the structure and powers of the federal government, dealing, respectively, with the legislative, the executive, and the judiciary departments of the government. Article IV deals mainly with the states, Article V provides for the amendment of the Constitution, several unrelated matters are covered by the three sections of Article VI, while Article VII deals with the subject of ratification by the states. The amendments relate to miscellaneous matters, more than half of them imposing limitations upon the federal government.

No single feature of the Constitution has contributed more to its usefulness and permanence than the fact that in the main it deals only with general principles. Wherever details are set forth they apply only to the machinery of government, such as the qualifications of the President and members of Congress, the mode of enacting statutes, and the like. Those parts of the Constitution which operate as grants of power to the federal government or define and protect the rights and liberties of the individual, are in general terms. This is the only proper plan to follow in framing a constitution. In the words of Chief Justice Marshall: "A constitution, from its na-

ture, deals in generals, not in details. Its framers cannot perceive the minute distinctions which arise in the progress of the nation, and therefore confine it to the establishment of broad and general principles."

This principle was fully observed by the framers of the federal Constitution. The convention did not undertake to make laws, but established a law-making body and gave it power to make laws on certain enumerated subjects. With the single exception of the Eighteenth Amendment, which is legislative in character, all the amendments to the Constitution have been of a character harmonious with the original instrument. As it stands, the Constitution embodies the general and permanent principles of justice which can never become obsolete, and so long as mere legislation, much of which is of a temporary and experimental character, is kept out of the Constitution, it may be expected to endure. Very different has been the history of the state constitutions, which consist largely of ordinary legislation which soon becomes obsolete.

**25. Constitutional Amendments.**—The framers of the Constitution realized that their work was not perfect nor final, and in Article V provided for making amendments. Two modes of amendment are provided, but all the amendments so far adopted have been by one of these modes, namely, the amendment is first proposed in Congress and adopted by a two-thirds vote of both houses, and then ratified by the legislatures of three-fourths of the states. Altogether there have been nineteen amendments. The first ten were adopted in 1791, and were merely interpretative or declaratory of what was intended by the original Constitution, and may be considered as practically a part of it. Two more amendments were added by 1804, and there were no more amendments until the adoption of the three so-called "war amendments" in 1865-1870. Then for more than forty years no further amendments were added. Four amendments were added during the years 1909-1920.

Additional amendments may occasionally be needed, but

in its essentials the Constitution can never grow out of date. Some of its details relating to mere organization or the machinery of government, for example, the mode of electing the President, his term of office, the mode of passing laws, etc., may be changed without impairing the constitutional system, but the essentials must be preserved, or the system will be destroyed. In the words of Mr. Elihu Root: "So far as the principles of government declared in our constitutions are right they do not change. No development of social or industrial life changes a true principle."

Besides the formal amendments added to the Constitution, several important developments have taken place in our constitutional system, and some special rules or customs have been adopted, which are not provided for or recognized in the Constitution. Such are the party system, the rule against the third term for the President, the change in the function of presidential electors, etc. These extra-constitutional developments and practices may be termed unwritten amendments to the Constitution.

**26. The Fundamentals of the Constitutional System.**—The government of the United States has been in successful existence without substantial change since 1789. During this time the government of every other civilized nation has undergone revolution or radical change. France has changed three times from empire to republic, Great Britain has become a democracy, the German Empire has risen and fallen. The government of the United States is the oldest unchanged government in the world. In some minor particulars changes have been made in the Constitution, but the fundamentals of the system are the same as they were in 1789. If the system is to continue to exist, these fundamentals must be preserved. What are these fundamentals?

There are five essential features that belong to the American constitutional system. These have been happily called the "irreducible minimum" in our constitutional government. Changes in other matters would not be vital, but the abandon-

ment of any one of these five principles would be revolutionary. The five essential and characteristic features of the government established by the federal Constitution are as follows:

1. It is a representative government. The people do not directly govern themselves, but govern through representatives. In the case of the federal government, all the people do is to elect members of Congress and presidential electors. The representative principle is also the basis of the state governments, though not so fully observed.

2. It is a dual system; sovereignty in all matters which affect the nation as a whole is vested in the federal government, while sovereignty in all matters which concern only the people of a state, is vested in the government of the state. By the preservation of the proper line of division between the two governments, the important adjustment between centralization and local government is maintained.

3. The legislative, executive, and judicial powers are distributed between three separate departments, each of these respective powers being given to the agency best fitted to exercise it, and also a dangerous concentration of power being avoided.

4. The liberty of the individual is protected by specific guarantees against oppression by the government. Even the majority cannot lawfully violate these guarantees.

5. Provision is made for the enforcement of constitutional limitations through the courts, which are given power to declare void all statutes brought before them in actual litigation which violate the Constitution.

The combining of all these features in our constitutional system necessarily makes our government very complicated. We have probably the most complicated system of government in the world. This makes it hard for foreigners, and even for Americans, to understand our constitutional system. But this complexity is necessary in order to secure "the blessings of liberty" to the people. The simplest possible form of government is a despotism in which all power is vested in the monarch.

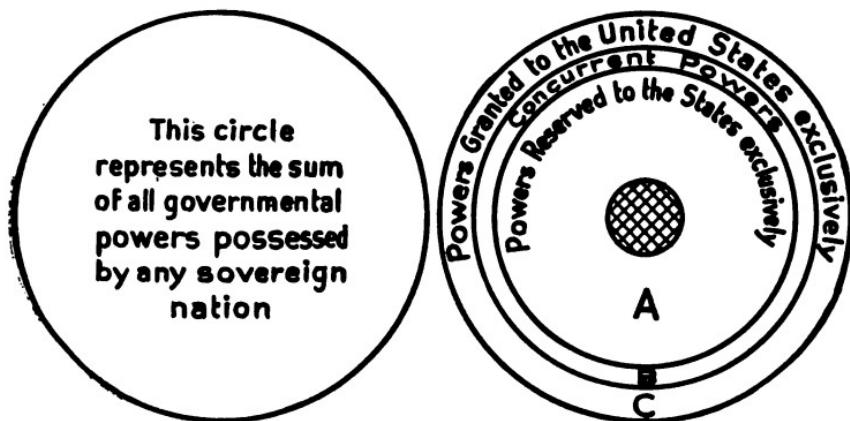
**27. The Double Scheme of Government.**—The most striking feature of our government is that it is not one government, but two. It is a combination of two governments, federal and state, with different spheres of action, each supreme and independent within its own sphere. Neither is vested with complete powers, but the two, operating together, discharge all the proper functions of government. Each government has its own legislative, executive, and judicial departments, and neither is at all dependent upon the other for the performance of its own part of the business of governing. This complicated arrangement is, probably, the hardest feature of our system to understand, but it is one of the most important. Probably in no other way could democratic government on so large a scale be carried on. This system makes possible the proper adjustment between centralization and local self-government. This will be better understood when the plan of distribution of powers between the two governments is explained.

**28. Distribution of Powers Between the Federal and State Governments.**—The federal government was established by the Constitution, and the state governments were established by the people of the respective states. The Constitution distributes the governmental powers between the two governments. Certain powers are granted to the federal government, and all the other usual powers, with a few exceptions, are left, or "reserved" to the states.

The plan of distribution is simple. To the federal government is granted the control of all matters of national interest, comprising the regulation of foreign relations and of such domestic matters as are of common interest to the states. To the states is reserved the control of all purely local matters which concern only the people of the state. Certain powers are prohibited to one or both governments as being contrary to American notions of liberty. Some powers are granted to the United States exclusively, such as the power to coin money or make treaties. Others may be exercised by both governments, such as the power to tax, or to borrow money. Still others are left

exclusively to the states, such as the power to regulate marriage and divorce, or to control business and industry within the state.

The general scheme of the distribution of powers under the Constitution will be made clear by the accompanying diagrams. Let the two circles represent all possible powers that may be possessed by any sovereign nation. The plain circle to the left represents the situation of a country without constitutional



limitations and with a single government vested with all governmental powers. The circle to the right shows the scheme of government under the Constitution of the United States. The large circle represents all governmental powers. The small shaded circle in the centre represents powers denied to both the United States and the states; the inner ring (*A*) represents powers reserved to the states exclusively; the second ring (*B*) represents the concurrent powers of the United States and the states; the outer circle (*C*) represents the powers granted exclusively to the United States.

**29. The Three Departments of the Government.**—There are three great powers of government, namely (1) the *legislative* power, which is the power to make, change, or repeal laws; (2) the *executive* power, which is the power to see that the laws are duly obeyed; and (3) the *judicial* power, which is the

power to interpret and apply the laws in actual controversies. In both the federal and the state governments these powers are distributed among three separate branches of the government, known, respectively, as the legislative, the executive, and the judicial departments.

It is possible for all three powers to be vested in the same person, or group of persons, but such a concentration of power would be dangerous if not fatal to the liberty of the citizen, and is found only in despotic governments. By the distribution of powers this danger is avoided, and also each power is intrusted to the agency best qualified to exercise it.

**30. Constitutional Limitations.**—In setting up the state and federal governments the people of the United States have taken care to protect themselves from oppression by the government by inserting in both the federal and the state constitutions various restrictions and prohibitions. The limitations in a state constitution apply, of course, only to the government of that state, but the federal Constitution restrains both the federal and the state governments. Some of the limitations in the Constitution apply to the federal government only; others apply to the state governments only; and some apply to both governments. These limitations will be dealt with in Chapter XV.

**31. Supremacy of the Constitution.**—In the United States the Constitution is the supreme law. All the departments of the federal government derive their powers from the Constitution, and are bound by its terms. Any act of the legislative, the executive, or the judicial department, not authorized by the Constitution, or which is prohibited by it, is void. Likewise, any act of a state government contrary to either the federal or the state constitution, is also void. All acts of the government in this country must be tested by the Constitution, and constitutional government cannot be maintained unless all departments of the government keep, or are kept, within the constitutional limitations.

While all branches of the government are bound by the con-

stitutional limitations, it is in connection with legislation that questions of constitutional power usually arise. Most of the power of the government is vested in the legislature as the law-making body. The executive and the courts do little more than execute and apply the law. In making laws the legislature is presumably somewhat held in check by the oath to support the Constitution; for a member of the legislature deliberately to vote for a law which he thought was unconstitutional, would be to violate his official oath. Before he casts his vote he ought to consider carefully whether the proposed law is constitutional. But ought the legislature to be the final judge of its own powers under the Constitution? The answer is No. History teaches that the tendency of the legislature is to stretch its power to the utmost. In the striking words of Madison, "the legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex."

But apart from its disposition to usurp power, the legislature is not qualified to determine finally its own powers under a written constitution. Constitutional interpretation is a matter for experts, deliberating under suitable conditions. Constitutional law is a highly specialized branch of professional study, and a legislature made up largely of men who are not lawyers is not competent to handle constitutional questions. Also, the large membership of the legislature and the conditions under which it works make it impossible for it to give proper consideration to such questions.

**32. The Courts the Guardians of the Constitution.**—The agency by which the constitutionality of statutes is finally determined under our constitutional system is the courts. The courts are the true guardians of the Constitution, and it is due mainly to the courts that constitutional principles have been maintained. In the words of Washington, the courts are "the keystone of our political fabric," or, as Woodrow Wilson expressed it: "Our judiciary is the balance wheel of our entire system."

The federal Constitution provides that "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." This seems to confer upon the federal courts express authority to pass upon the constitutionality of acts of Congress, for certainly the question whether a federal statute conflicts with the federal Constitution, is a question arising under the Constitution if any question can be such. At any rate, it was well understood in the constitutional convention of 1787 that the courts would have this power.

This was the view of practically all contemporary statesmen of importance. Thus Alexander Hamilton said: "The complete independence of the courts of justice is peculiarly essential in a limited constitution. . . . Limitations of this kind can be preserved in practice in no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void." James Madison said: "A law violating a constitution established by the people themselves would be considered by the judges as null and void." Oliver Ellsworth, afterward Chief Justice, declared that: "If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void." These three men were members of the constitutional convention which framed the Constitution. John Marshall, in 1788, before the Virginia ratifying convention, said: "If they [the United States] were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void."

The great public service of determining the constitutionality of statutes is rendered by the courts in a purely incidental way

in the performance of their judicial duty of settling controversies between individuals. A case is presented in which some right is claimed under a statute; the existence of the right depends upon whether or not the statute is valid. The court tests the statute by the constitution, which is the supreme law, and if the statute is found to be in conflict with the Constitution, the court pronounces the statute void, and declines to enforce it.

**33. Application and Development of this Doctrine.**—The question of the constitutionality of a statute can arise only where there is a written constitution placing restrictions upon the legislature. Wherever the legislature has unlimited power, no statute passed by it could be unconstitutional. For this reason acts of the British Parliament are never held unconstitutional. An act violating the fundamental rights of Englishmen might cause a defeat of its authors at the next election, but no court could call it unconstitutional. Also, on the continent of Europe, where our conceptions of liberty do not exist, the courts, as a rule, have no power to pass on the constitutionality of statutes.

But wherever there are written constitutions restricting the power of the legislature, this power is usually found. Before the American Revolution many acts of colonial legislatures were held void by the British Privy Council, and several American courts held state statutes void before the adoption of the federal Constitution. Under the constitutions of Canada, Australia, and South Africa many statutes have been held unconstitutional. With the exception of acts of Parliament, the acts of every legislature in the British Empire are subject to such review by the courts. Likewise, in the more enlightened countries of South America, such as Argentina and Brazil, the courts have this power.

The courts will not hold a statute void unless its unconstitutionality is reasonably clear. The American courts have generally exercised this power sparingly. There is little danger that statutes clearly within the power of the legislature will be

held void, and the legislature should pass no others. Special interest attaches to the course of the Supreme Court of the United States. In all it had held federal statutes, or parts of statutes, unconstitutional in about forty cases through the year 1920. The first case in which it held a statute unconstitutional was the famous case of *Marbury v. Madison*, decided by Chief Justice Marshall in 1803. This was the only federal statute held void by Marshall during the thirty-five years he was Chief Justice, though he held several state statutes unconstitutional.

### Questions

1. Read the Constitution, including the amendments, through carefully in one sitting. How long did it take you?
2. What is the nature of the Preamble to the Constitution? Does it confer any power upon the federal government? What were the objects for which the Constitution was adopted? Who "ordained and established" the Constitution?
3. How many articles are in the original Constitution? What is the first article about; the second article; the third article?
4. What feature of the Constitution has contributed especially to its usefulness and permanence? Have the amendments all been consistent with the original plan? Mention a difference in the nature of their contents between the federal Constitution and the state constitutions.
5. How many amendments are there to the Constitution? Give the year of the adoption of each. How many amendments were there from 1800 to 1864? By what procedure have the amendments been adopted? Amendments have been proposed fixing the salary of the President, changing the name of the United States to "America," and including in the Preamble some recognition of God. Should these amendments be adopted? Some persons advocate changing the mode of amendment so as to make it easier to amend the Constitution. Do you approve of this?
6. Which of the existing governments of the world has existed longest in its present form? Is the United States Government the same as it was in 1789? What are the five essential features of the government of the United States?
7. Under how many governments do you live? How is it possible for there to be more than one government in the same country? Who established the federal government? the state governments?
8. What kinds of matters have been placed in the control of the federal government? Look in the Constitution and find four subjects over which

Congress has control. Mention two things that Congress is forbidden to do; two that the states are forbidden to do; two that both Congress and the states are forbidden to do.

9. Name the three departments of the government and tell what each one does. Which department has the most power?

10. Who determines whether or not a statute is constitutional? Why should not Congress be the final judge in the matter? Some persons suppose that it was not intended that the courts should have the power to declare statutes unconstitutional. What was the opinion of Hamilton; of Madison?

11. Do the courts of any other countries have the power to declare statutes unconstitutional? How many acts of Congress were held void by Chief Justice Marshall? What would be the effect upon the Constitution if the courts would enforce statutes which violate the Constitution?

## I.—THE FEDERAL GOVERNMENT

### CHAPTER IV THE CONGRESS

**34. In General.**—The Constitution provides that, “All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” The main advantages of having a legislature composed of two branches are that, if two bodies have to pass upon a proposed law, each will act as a check on the other, and also the necessary deliberation will usually be secured to prevent hasty and ill-advised legislation. There is no doubt that this arrangement has worked well, and that better laws are obtained in this way.

A special reason for having two houses exists in the case of the national legislature in that it makes possible the recognition of the political equality of all the states, large and small, and at the same time allows for the fact that some states are larger than others. The senators are supposed to represent the states, as such, and in the Senate all the states are equal, each state having two senators. Members of the House are supposed to represent the people, and in the House of Representatives the states are represented in proportion to population. It should be noted that, under Article V, relating to amendments to the Constitution, no state may be deprived of its equal representation in the Senate without its own consent, which, of course, would never be given.

**35. The Senate.**—The Constitution provides that: “The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.” The mode of choosing

Senators was changed by the Seventeenth Amendment (1913) providing for the election of Senators by the people. It is provided that: "No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen." The qualifications of senators are higher, and their term of office longer than the qualifications and term of representatives, the difference being made because of the greater dignity of the senatorial office, and the greater importance of some of the matters with which the Senate has to deal. The number of senators is determined by the number of states, two senators being allowed for each state, the present number being ninety-six.

Senators were divided in the beginning into three classes, going out of office, respectively, in two, four, and six years. Thus one-third of the Senate is elected every two years, all the senators after the first holding office for six years. By this device of retiring only one-third of the Senate at each election, the Senate of each new Congress is left with a membership of which two-thirds have had senatorial experience. Like the Supreme Court, the Senate is thus a permanent body. Its actual permanence is further secured by the fact that senators are commonly re-elected. An effective and popular senator may hold office practically for life. This continuity of the Senate gives dignity to the senatorial office and stability to the government, and makes possible the development and maintenance of a continuity and permanence in national policies in both domestic and foreign affairs.

It is provided that: "The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be evenly divided"; also, "the Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States." The "other officers" or, as they are described in the statute providing for them, "persons employed in the service of the Senate," are: secretary, sergeant-

at-arms, doorkeeper, postmaster, chaplain, besides clerks, pages, etc. The Vice-President is not a member of the Senate, but the president of the Senate, elected to preside in the absence of the Vice-President, is a member of that body and has a vote on all questions.

**36. The House of Representatives.**—The Constitution provides that: "The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." Under this provision a new House of Representatives is elected every two years. The term of representatives is purposely made short so that they may be held duly responsible to the people.

As a rule, however, representatives who give satisfaction are re-elected. Of the 429 members of the Sixty-sixth Congress (elected 1918), only 106 were serving their first term; 70 their second term; 83 their third term; 58 their fourth term; 33 their fifth term; 16 their sixth term; 18 their seventh term; 13 their eighth term; 11 their ninth term; 6 their tenth term; 5 their eleventh term; and 7 their twelfth term. Many of these had served continuously from the time they were first elected. Joseph Cannon, of Illinois, was serving his twenty-second term, mostly continuous. This means forty-four years in Congress. Few representatives fail to stand for re-election, unless they have some other office in mind, such as a governorship or a senatorship. Most members of Congress become professional office-holders, and constitute, along with other public officers, a governing class in this country. When once a person becomes firmly intrenched in his seat in Congress it is hard to dislodge him, especially in view of the expense and uncertainty of a campaign for that purpose.

It is provided that: "No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which

he shall be chosen." The pronoun "he" as here used includes both sexes. Women are eligible to election to Congress when made so by their state law. The first woman representative was Miss Jeannette Rankin, of Montana, who was a member of the Sixty-fifth Congress (1917-1919).

Representation in the House of Representatives is in proportion to population, the more people the state has the larger its representation. It is provided that: "Representation shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed." By the Constitution the number of representatives for the First Congress was fixed at sixty-five. The ratio upon which the representation of each state was based was fixed at one representative for every 30,000 inhabitants, provided that each state should have at least one representative. The ratio has been changed with each succeeding census, it being fixed under the census of 1910 at one representative for every 211,977 inhabitants. The membership of the House of Representatives of the Sixty-seventh Congress (elected under the census of 1910) was 435.

Congress has granted to organized territories the right to be represented in the House by one delegate each, who has the right to speak on bills affecting the territory, but no vote. This now applies only to Alaska and Hawaii. The Philippine Islands and Porto Rico are represented by resident commissioners, who have no seat, but, by courtesy, are allowed the privilege of debate.

It is provided that: "The House of Representatives shall choose their Speaker and other officers." The "other officers" are provided by statute as follows: clerk, sergeant-at-arms, doorkeeper, postmaster, chaplain, besides numerous clerks, pages, etc. These officers, or rather employees, of the House are not members of that body, but are employed by it. The speaker elected by the House is its presiding officer and the most powerful member. Most of the work of the House is done by committees, and the speaker is the chairman of the

important committee on rules. Prior to the change made in 1910, by which he was shorn of much of his power, the speaker named all of the other committees and appointed their chairmen. By thus controlling the committees he practically con-

**REPRESENTATION OF THE STATES IN THE HOUSE  
OF REPRESENTATIVES (1920)**

Alabama.....	10	New Mexico.....	1
Arizona.....	1	New York.....	43
Arkansas.....	7	North Carolina.....	10
California.....	11	North Dakota.....	3
Colorado.....	4	Ohio.....	22
Connecticut.....	5	Oklahoma.....	8
Delaware.....	1	Oregon.....	3
Florida.....	4	Pennsylvania.....	32
Georgia.....	12	Rhode Island.....	3
Idaho.....	2	South Carolina.....	7
Illinois.....	25	South Dakota.....	3
Indiana.....	13	Tennessee.....	10
Iowa.....	11	Texas.....	18
Kansas.....	8	Utah.....	2
Kentucky.....	11	Vermont.....	2
Louisiana.....	8	Virginia.....	10
Maine.....	4	Washington.....	5
Maryland.....	6	West Virginia.....	6
Massachusetts.....	16	Wisconsin.....	11
Michigan.....	13	Wyoming.....	1
Minnesota.....	10		—
Mississippi.....	8	Alaska.....	delegate 1
Missouri.....	16	Hawaii.....	delegate 1
Montana.....	2	Philippines	
Nebraska.....	6	resident commissioners	2
Nevada.....	1	Porto Rico	
New Hampshire.....	2	resident commissioner	1
New Jersey.....	12		

trolled the work of the House. Now the committees are elected by the House.

The speaker assigns to the appropriate committees the various bills, distributing them in such a manner as best to serve his policies. In matter of recognizing members he also exerts

great power. Except in a few special cases, he is not obliged, as ordinarily in parliamentary bodies, to recognize the first member who rises and addresses the chair, but he recognizes whomsoever he pleases. He may thus largely limit the right of speaking to persons of his own choice, for only a member who has been recognized by the speaker has a right to address the House. The speaker, as a member of the House, has all the privileges of members, including the right to vote. Usually, however, he does not vote except in case of a tie, or where the voting is by ballot. The speaker is elected by the dominant party in the House, and acts as the leader of his party in that body. In political influence he stands second only to the President; in rank he stands next to the Vice-President and along with the justices of the Supreme Court.

**37. Compensation, Privileges, and Disabilities of Congressmen.**—The Constitution provides that: "The Senators and Representatives shall receive a compensation for their services to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place."

Under this provision the members of Congress fix their own salaries, being restrained only by the president's veto and the fear of defeat at the polls if they vote themselves too much money. The present salary is \$7,500 a year, besides mileage at the rate of twenty cents a mile. Senators and representatives are paid the same. Congressmen also receive an allowance for clerk's salary and stationery, and are provided with offices. They are also allowed the franking privilege, or free use of the postal service. The president of the Senate and the speaker of the House each receive \$12,000 a year.

It is provided by the Constitution that: "No senator or representative shall, during the time for which he was elected,

be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office."

**38. Congressional Elections.**—Both senators and representatives are elected by the people of the several states. The Constitution provides that: "The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators." \* Congress has fixed the Tuesday after the first Monday in November in the even-numbered years as the day for holding congressional elections.

It is provided by what is known as the Apportionment Act that where a state is entitled to more than one representative, the election shall be held by districts, one representative from each district. The division of the state into districts is done by the state legislatures. Where a state is entitled to only one representative, he is known as a representative "at large," and, also, where after a new census Congress in making a new apportionment of representatives gives a state an additional representative, he is necessarily elected from the state at large until the state can be re-districted. A state may thus have some representatives representing districts and one or more at large. Senators are elected from the state at large.

**39. Sessions of Congress.**—Congress meets in the Capitol building at Washington, the Senate in the north wing and the House in the south wing. Each house has also a handsome

\* The exception as to the places of choosing senators was made in view of the fact that originally senators were chosen by the state legislatures, which, of course, would normally meet at the state capitals. This exception was rendered obsolete by the adoption of the Seventeenth Amendment (1913) providing for the popular election of senators.



AIRPLANE VIEW OF THE CAPITOL AT WASHINGTON.

office building recently erected near the Capitol. The regular sessions of Congress are determined by the provision of the Constitution that: "The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." There are thus two regular meetings of each Congress, one during each year of its life. The life of each Congress is from March 4 of the year next after the congressional election until March 4 of the second year following. Thus the term of the First Congress was from March 4, 1789, to March 4, 1791, and that of the Sixty-sixth Congress from March 4, 1919, to March 4, 1921.

It will be seen that the first regular session of Congress does not begin until more than a year after its members were elected. Thus the first regular session of the Congress elected in November, 1918, began in December, 1919. This long delay is regarded as unfortunate, but Congress has at any time the power to change the date of meeting. The delay may also be avoided by the calling of an extra session by the President, which the Constitution empowers him to do. Such special or extraordinary sessions have often been called, and also special sessions of the Senate for the purpose of confirming nominations, etc.

**40. Congressional Committees.**—It is very plainly impossible for any considerable number of persons to transact business involving matters of detail without making use of committees who can work out the matters referred to them and report the results of their deliberations and investigations to the body as a whole for final action. Both the House and the Senate have too large a membership to transact their business in detail in regular assembly. The House especially, with over 400 members, can hardly be called a deliberative body. Both houses make large use of committees. In the Sixty-sixth Congress there were about seventy committees in the Senate and about sixty in the House. These are standing or permanent committees; select or special committees are also occa-

sionally appointed, which go out of existence with the performance of their special duties.

**41. Party Caucuses and Committees.**—Party government plays a large part in the business of Congress. Both the majority and the minority parties in each house hold secret meetings or caucuses before and during the sessions of Congress for the determination of party measures and policies. In the caucus held before the opening of each new Congress the majority party selects the speaker of the House, whose election is a matter of course, and the minority party in its caucus selects its leader. The question of house rules is also considered, as well as other party matters. Party control through the caucus and the party leaders is quite complete, and upon strictly party measures every member of the party is expected to vote in accordance with the decision of the majority in the party caucus. Failure to stand by the party may cause a member to lose his influence, and even lead to his defeat at the next election. Each party has also a congressional committee composed of senators and representatives, which co-operates with the national committee of the party as a part of the party organization.

**42. Bills, Statutes, and Resolutions.**—A bill is a form or draft of a proposed statute which has not yet been enacted into law; after a bill has been passed by the legislature and been approved by the executive, or repassed over his veto, it becomes a law, act, or statute. An act may be either public or private, but only public acts are properly called law. A public act concerns the public at large, or some portion thereof; a private act relates to individuals. Examples of public acts are the Bankruptcy Act, the Sherman Anti-Trust Act, the Federal Reserve Act, the Reclamation Act, the Judiciary Act, etc. Examples of private acts are acts granting pensions to individuals, awarding medals, conferring special military rank, and the like. The private bills introduced into Congress usually outnumber the public bills.

A resolution is sometimes scarcely distinguishable from a

bill. Ordinarily it relates to matters of minor or temporary interest, and in general it is a statement of a matter of fact, or the expression of the will, purpose, or opinion of the body, or a declaration announcing or constituting a part of the accomplishment of some act. A resolution may be simple, concurrent, or joint. A simple resolution is one passed by either house alone; a concurrent resolution is one passed by one house and accepted or concurred in by the other; a joint resolution is one passed by both houses in the same manner as a bill. Simple resolutions deal with matters affecting only the house by which they are passed. In this manner each house adopts its rules of order, calls upon officers of other departments to furnish information, disciplines its members, or expresses its opinion on public questions. A concurrent resolution relates to matters which in like manner concern both houses; such are resolutions fixing the time for adjournment, adopting joint rules, providing for the printing of documents, or dealing with other matters affecting the affairs or business of Congress, or expressing the opinion of Congress. Neither simple nor concurrent resolutions are sent to the president for approval.

A joint resolution is legislative in character and has the force of law and is passed in the same manner as any other act of Congress. It must be signed by the President or passed over his veto. It differs from an ordinary act of Congress, so far as there is a difference, in that while a bill embodies ordinary legislation, a joint resolution usually deals with matters of an incidental, minor, or exceptional character. Joint resolutions are published with the other acts of Congress, and many of them are found in the statute laws of the United States. Among such resolutions may be cited various provisions relating to the Library of Congress, resolutions authorizing the coinage of money, making United States notes legal tender, designating Mother's Day, authorizing the secretary of the treasury to borrow money, declaring war, making appropriations, admitting new states, etc. The Hawaiian Islands were annexed by joint resolution. Proposed amendments to the Constitution

are adopted by Congress by joint resolution, but are not submitted to the president for approval. As such resolutions have already received a two-thirds vote of members of Congress—enough to repass them over the President's veto—submission to the President is deemed unnecessary and not within the constitutional requirement.

**43. The Enactment of Laws.**—Unlike the state constitutions, the federal Constitution does not set out in detail the steps to be followed in introducing and acting upon bills, except with reference to the submission of bills when passed by both houses to the President. Other matters of procedure are determined by the rules of the Senate and House. Any member may introduce as many bills and resolutions as he chooses and on any subject, except that bills for raising revenue must originate in the House. Bills introduced by members are referred to the appropriate committees, which may report the bills unfavorably, or favorably, with or without amendments made by the committee, or they may fail to report them at all.

The great majority of bills introduced are killed in committee. Thousands of bills which are without merit, many of which were perhaps introduced by members merely to satisfy their constituents, are thus quietly disposed of. As committee meetings are generally secret the constituents have no real means of keeping check upon their representatives. The committees frequently prepare and report their own bills, and much important legislation is drafted by committees or by party leaders in caucus. In some cases the President joins in the preparation of a bill. Committees of the two houses frequently co-operate in preparing a bill.

When a bill has been reported to either house, and has been duly considered and passed by a majority of that house, it is reported to the other house for consideration. If passed by a majority vote of this house also, it is then submitted to the President as required by the Constitution.

If the President approves the bill, he returns it to the house in which it originated with his signature, but if not, he returns

it unsigned with a statement of his objections to it. It may then be reconsidered by Congress, and if repassed by a two-thirds vote of both houses, it becomes a law notwithstanding the President's veto. While Congress remains in session the President must return bills within ten days or they become laws without his signature. If Congress adjourns within the ten days and the bills are not returned by the President, they do not become laws. By withholding a bill in this way when Congress is about to adjourn, the President may in effect veto a bill without assigning reasons and without the possibility of its being passed over his veto. This is called a "pocket veto."

**44. Appropriations and Expenditures.**—It is provided that: "No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time." This provision gives to Congress the absolute control of the treasury, since no money can be drawn by any department of the government without the authority of Congress in the form of an appropriation. Due publicity is secured by the fact that all appropriations are embodied in statutes, and also by the requirement of the publication of statements of receipts and expenditures. These statements are found in the annual reports of the secretary of the treasury. Appropriations and disbursements have hitherto been made by Congress in a most unbusinesslike way resulting in great waste, but a national budget law was passed in 1921, which, it is hoped, will bring system and economy into national finances.

**45. The Powers of Congress.**—Congress, like the other departments of the federal government, has only such powers as are granted to it in the Constitution. The strictly legislative powers are set out in Article I, Section 8, of the Constitution. Some of these will be discussed in other sections of this book, such as the power to tax, the power to regulate commerce, etc.

It is quite commonly supposed that the Constitution con-

tains a clause authorizing Congress to legislate for the "general welfare," but such is not the case. The expression "general welfare" occurs twice in the Constitution, once in the Preamble, which grants no power, and also in connection with the grant of the power to tax. All legislation by Congress is presumed to be for the general welfare, but there is no specific grant of the power to legislate therefor. Such a grant would render all the other grants superfluous, for the power to legislate for the general welfare would include them all.

Scattered through the Constitution are various special or incidental powers vested in Congress, mostly of an administrative rather than a legislative character. Such are, power to provide for taking the census; to regulate congressional elections; to fix the day on which Congress shall meet; to fix the compensation of members of Congress and of the President and judges; and many others. Besides the powers granted to Congress, certain powers are granted to each house separately, namely, power to judge of the election and qualifications of members; to compel attendance; to make rules; and to punish and expel members. Congress also has jurisdiction of the impeachment of civil officers of the United States. Impeachment proceedings are started by the House of Representatives by presenting formal charges against the accused to the Senate. The Senate sits as a court and tries the accused. This is a case in which Congress exercises a judicial function.

**46. The Implied or Auxiliary Powers.**—The grant of a particular power to Congress naturally includes power to do whatever may be reasonably necessary to the full and proper exercise of the power expressly granted; such incidental or auxiliary power is implied in the express grant. Thus the power to borrow money includes the power to issue notes or bonds for the money borrowed. So important a matter, however, has not been left to mere implication. At the end of the list of enumerated powers granted to Congress in the Constitution is the grant of power, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers,

and all powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Under this clause the Supreme Court has been liberal in recognizing incidental powers. The incidental power need not be the sole and indispensable means of executing the power expressly granted; it is enough if it is an appropriate means. In the exercise of its powers Congress is given the choice of means, and may employ those measures which, in its judgment, will best accomplish the end in view. This doctrine is summed up in a famous declaration of Chief Justice Marshall which has served as a guide for the Supreme Court for over a century: "*Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.*"

### Questions

1. What are the main advantages of having Congress consist of two houses? How many senators are there from your state; from Delaware; from all the states together? Name the senators from your state. How many representatives has your state? What determines how many representatives a state shall have? Who is your representative?
2. Point out the differences in the qualifications and term of office of senators and representatives. How often do we have a new Congress? Does the Senate as a body ever go out of office all at once? Does the House? Who presides over the meetings of the Senate; of the House?
3. How are members of Congress elected? Who determines the qualifications of voters in congressional elections?
4. How often are regular sessions of Congress held? When does the first (long) session begin; the second (short) session? May Congress change the time of beginning the sessions? If it becomes important for laws to be passed when Congress is not in regular session, who may call extra sessions?
5. Why do the houses of Congress make so much use of committees? Name three important committees of each house. What do committees do? Who appoints committees?
6. What is a bill; a statute; a simple resolution; a concurrent resolution; a joint resolution? Which would be the form to use to expel a senator; to declare war; to adjourn both houses of Congress; to levy duties on imports?

7. In a general way how are laws enacted by Congress? May a bill be passed without the president's approval?

8. In which branch of Congress must bills for raising revenue originate? Why? What provisions are found in the Constitution to prevent the waste of public money?

9. What is the source of all the powers of Congress, and in this respect how does Congress differ from a state legislature? Name five powers of Congress. Has Congress power to legislate for the "general welfare"? Where is the so-called "general welfare clause" found in the Constitution?

10. Congress is not expressly authorized to charter corporations, but has chartered thousands of national banks. Where does it get power to do this? What was Chief Justice Marshall's doctrine as to what incidental powers may be exercised by Congress?

## CHAPTER V

### THE PRESIDENT

**47. The Office of President.**—The Constitution provides that: "The executive power shall be vested in a President of the United States of America." The Presidency is the greatest office in the government of the United States. As the chief executive of a great nation the President is one of the most powerful rulers on earth. His dignity is qualified to some extent by the fact that he holds office for only a limited term, but it may be doubted whether any other person in the world is his equal in power and influence while he is in office. Above all other figures in the country the occupant of the White House appeals to the popular imagination.

The constitutional qualifications for the Presidency are as follows: "No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States."

The Constitution provides that: "The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive, within that period, any other emolument from the United States, or any of them." The salary of the President was originally fixed at \$25,000 a year, remaining at this figure from 1789 to 1873, when, at the beginning of President Grant's second term, it was made \$50,000, remaining at this figure until 1909, when it was fixed at \$75,000 a year, with an allowance of \$25,000 for travelling expenses. He has also the use

of the Executive Mansion, and various incidental perquisites, making the total cost of the presidential office probably about \$300,000 a year.

**48. Term of Office—Re-election.**—After much debate the constitutional convention fixed the President's term of office at four years, with no provision on the subject of his eligibility to re-election. The President may, therefore, be re-elected,



AN AIRPLANE VIEW OF THE WHITE HOUSE AT WASHINGTON.

which has often happened. But, although there is no provision in the Constitution against a third term, or any number of terms, the overwhelming sentiment of the American people is against a third term. The President's term begins on March 4 after his election, this being the date on which the government under the Constitution was inaugurated. This date is fixed by statute and also by the Twelfth Amendment. Proposals to amend the Constitution so as to change the length of the President's term, or to render him ineligible for re-election, are common, but there is no general agreement as to what change should be made. The present arrangement is probably as satisfactory as any that could be devised.

**49. Election of the President.**—The most important political event in American life is the election of the President, which occurs once in every four years. It is the only act of government in which all the voters of the country may take part. Members of Congress for the several states are elected by the voters of the respective states, but the President and Vice-President are elected by the people of the whole country. This fact and the great dignity and importance of the presidential office make the election of the President a matter of extraordinary interest. There are three steps in the election: the nomination of the candidates, the choice by the people of presidential electors, and the meeting of the electors to cast their votes. The nomination of the candidates by national conventions of the several political parties will be described in Chapter XVIII.

The Constitution leaves the mode of appointing electors to the several states, it being provided that "each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the Congress." Different modes of choosing electors have been employed, but since 1868 all the states have chosen their electors by a general election. Each party nominates its full ticket of electors and the people of the state at large by general vote make a choice between the respective tickets. Technically the vote is cast for the electors, who later are supposed to vote for President and Vice-President, but actually the vote is for these officers themselves, the people thus indirectly choosing President and Vice-President, without caring, or perhaps even knowing, who the electors may be. The real vote is for the heads of the ticket. As soon as it is known which electors are chosen the result of the presidential election is known, for the subsequent meeting of the electors to cast their votes for President and Vice-President is merely a matter of form.

After the several parties have nominated their candidates, the appeal to the people begins. Throughout the summer and

up to the day of the election the struggle for the Presidency occupies the attention of the country. The period of a presidential election is naturally a time of unrest and excitement. Not only the President but congressmen and many state officers are elected at the same time, and in view of the possibility of a change of administration and party control of the government, business is somewhat timid until after the election. The government itself largely merely marks time during this period. If the President is himself a candidate for re-election, which he almost always is if not already in his second term, he devotes himself mainly to the election, and many of the government officials do the same.

The disturbance of business and the distraction of the people from their ordinary pursuits during the period of a presidential election have sometimes been urged as a serious objection to the frequency of such elections, and as an argument in favor of a longer presidential term. It would seem, however, that the disadvantages are more than offset by the benefits to be derived from the campaign. This is especially true since the campaigns have become less noisy and more educational. Even so dry a subject as the currency absorbed the attention of the country in the silver campaign of 1896. There can be no doubt that the intensive discussion for five months of great national issues and problems must have very great educational value. Moreover, the campaign brings the national government home to the people and arouses in them a sense of civic responsibility and an interest in public affairs as perhaps nothing else but war could do. In the words of Mr. Bryce: "Nowhere does government by the people, through the people, for the people, take a more directly impressive and powerfully stimulative form than in the choice of a chief magistrate by fifteen millions of citizens voting on one day." The number of voters is now about 30,000,000.

The vote for presidential electors takes place on the Tuesday next after the first Monday in November in every fourth year after the last election, this date being fixed by Congress as

provided in the Constitution. A new House of Representatives, one-third of the Senate, and many state governors and other state officers are elected on the same day. Congress also fixes the time when the electors so chosen shall meet and cast their votes for President and Vice-President. By the present law this date is the second Monday in January next following the choice of electors, the electors of each state meeting at such place therein as the state legislature may direct. The casting of votes by the electors is, of course, merely a formal ratification of the will of the people as expressed in the November election. The votes are certified to the president of the Senate and opened and counted as provided by the Twelfth Amendment.\*

The inauguration of the newly elected President takes place on the fourth of March next following his election. The Constitution provides that: "Before he shall enter on the execution of his office, he shall take the following oath or affirmation: 'I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.'" By custom the oath is administered by the Chief Justice of the Supreme Court. After taking the oath the new President delivers an inaugural address in which he sets forth in general the policies which shall govern his administration. Great crowds flock to Washington to witness the inauguration exercises.

**50. The Cabinet.**—The Constitution makes no provision for the President's cabinet, but as a matter of custom the heads of the executive departments compose an advisory body to the President known by that name. These officers meet informally with the President in his office in conferences for re-

\* Under the original mode of election provided for by the Constitution the electors voted only for President, the candidate receiving the highest number of votes becoming President, and the candidate receiving the next highest becoming Vice-President. This plan did not work well, and by the Twelfth Amendment, adopted in 1804, it is provided that the electors shall vote for the two officers separately.

ports and discussion. The meetings are informal and usually secret, and no record is kept of the proceedings. As a rule there are no resolutions nor voting on propositions submitted. When taken, a vote is significant only as an expression of opinion. Thus it is related that after a vote by President Lincoln's cabinet on an important question upon which all the members of the cabinet were against him, the President announced the result as follows: "Seven nays, one aye; the ayes have it."

**51. Powers and Duties of the President.**—The powers and duties of the President, like those of Congress and the federal courts, are defined by the Constitution, and he can lawfully exercise only such authority as is conferred upon him by that instrument. The functions and powers of the President are set forth as follows:

Section 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the active service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and

in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all officers of the United States.

Such in bald outline are the powers and duties of the President. They extend to five general classes of subjects, namely: (1) the appointment and removal of officers of the United States; (2) legislation; (3) foreign relations of the United States;\* (4) the enforcement of the laws; and (5) the command of the army and navy.† But the mere enumeration of his functions as set forth in the Constitution conveys a very inadequate notion of the vast power and influence of the President as the presidential office has developed with the growth of the nation and the increasing participation of the government in the ordinary affairs of life.

As chief executive the President stands at the head of a great number of officials engaged in carrying on the work of the government throughout the country. Many of these are his personal appointees, and practically all of the more important officers hold their positions at his pleasure. As head of the national administration he not only determines to a great extent the personnel of the administration, but he very largely directs the heads of departments and their subordinates in the actual performance of their duties. Many of the regulations governing the conduct of public affairs are prescribed by him. Not only as head of the administration, but scarcely less as head of one of the great political parties, he exerts an almost controlling influence over national policies and determines in large measure the legislation of his administration. Because of his unequalled opportunity of reaching the people through his messages to Congress and his public addresses, he, more than any other individual, may mould the sentiment of the nation. He is the official representative of the country in the

\* As to the President's control of foreign affairs, see Chapter XXXII.

† As to the military powers of the President, see Chapter XXXI.

conduct of foreign relations, and is primarily responsible for its foreign policy. More than once there has rested almost solely in his hands the issue of peace or war.

Charged with the duty of taking care that the laws be faithfully executed, it is to him that the nation looks for the maintenance of law and order throughout the country, so far as this function is committed to the federal government. When Congress is not in session he is practically the government. As commander-in-chief of the army and navy his power is considerable even in time of peace, and when the country is at war is practically that of a military dictator. The power and influence of any particular President will, of course, depend largely upon his own personal qualities and his relations to the political party in power, but even when occupied by a mediocre personality the office of President of the United States is one of the greatest dignity and importance.

**52. Appointments to Office.**—The President's power of appointment is one of the most important of his powers, not only because of the number of officers to be appointed and the great importance of some of these, but also because of the influence it enables the President to exert on members of Congress and others through the distribution of patronage. The power extends to the appointment of military and naval officers as well as of civil officers. The Constitution itself establishes or makes express provision for very few officers. The establishment of federal offices is left almost entirely to Congress. The President has no power to create offices, or to appoint persons to offices not created by Congress. Congress has established a large number of offices, and new offices are constantly being created. The number of officers at present nominated or appointed by the President is about 11,000. These, of course, are the more important officers.

The making of these appointments is one of the most burdensome and important duties of a newly installed President. President Harrison stated after his retirement that he spent from four to six hours daily during the first half of his term

hearing applications for office. It is related of President Lincoln that on one occasion during the Civil War a friend remarked: "You look anxious, Mr. President; is there bad news from the front?" "No," was the reply, "it isn't the war; it's that postmastership at Brownsville, Ohio." Of course the President cannot personally select all the vast number of officers to be appointed or nominated by him; only in very few cases can the appointments be made from among his personal acquaintances or without leading suggestions from others. The heads of departments, justices of the Supreme Court, and the more important diplomatic and military and naval officers are usually selected by the President himself. Judges of inferior courts, revenue officers, customs officials, district attorneys, postmasters, and other officers of lower rank are appointed usually upon the suggestion of senators and party leaders in the several states.

In accordance with a principle known as the "courtesy of the Senate," the selection of these officers is usually left to the senators of the respective states, if of the President's own party, and if not, to the party leaders of the state. As a rule the Senate will confirm only nominees who are acceptable to the senators or party leaders of the state affected.

**53. Term of Federal Officers.**—There is no definite term of office of federal officers unless fixed by law. The Constitution provides that the federal judges shall hold office during good behavior. Heads of the executive departments hold office during the pleasure of the President, going out of office, of course, with the expiration of the presidential term. Diplomatic officers likewise are appointed for no definite terms, and tender their resignations with a change of administration. The term of many officers is fixed by law; thus that of United States district attorneys, marshals, chiefs of bureaus, postmasters (except of the fourth class), and many others, is four years. For some officers no term is fixed; for example, the treasurer of the United States, the commissioner of internal revenue, the solicitor-general, the commissioner of pensions, and others. Officers and

employees entering the service under the Civil Service regulations hold for indefinite terms (Section 70).

**54. The Power of Removal.**—The Constitution is silent as to the power of removing officers of the United States, except by impeachment. But the removal of an officer by some less cumbrous process may sometimes be necessary, for the good of the service, and that an officer may be otherwise removed has been accepted from the beginning, though it was not clear by whom he might be removed. It has now long been settled, however, that the President has the power of removal not only of officers appointed by himself alone, but of those also for whose appointment the consent of the Senate is necessary. Federal judges, however, are removable only by impeachment. The President may remove officers appointed by his predecessors as well as his own appointees. The President's power of removal extends to military and naval officers as well as to civil officers. One mode of removing an officer is the appointment of another person in his place.

The removal of an incompetent or unfit officer by the President may be regarded as the discharge of his duty to take care that the laws be faithfully executed, but the President may remove officers not only for unfitness and incompetency, but for any other reason satisfactory to himself. Removals for political reasons have been common. Since the introduction of the spoils system by President Jackson in 1829, wholesale removals have taken place with each change of administration, but this evil has been greatly checked as to officers of the lower grades by the development of the Civil Service system. Officers and employees appointed by the courts or by the heads of departments are removable by them.

**55. Removal by Impeachment.**—The Constitution provides that: "The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Impeachment proceedings are started by the House of Representatives, which presents formal charges against

the accused to the Senate, which sits as a court and tries the defendant. A two-thirds vote of the Senate is required for conviction. When the President is tried, the Chief Justice of the Supreme Court presides at the trial. "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of trust, honor, or profit under the United States; but the party so convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law." The President's pardoning power does not extend to cases of impeachment. There have been seven impeachment trials. Six federal judges have been impeached, of whom three were acquitted and three removed. President Andrew Johnson was impeached in 1868, and missed conviction by only one vote. The secretary of war, William W. Belknap, was impeached in 1874, but resigned while under impeachment, and a judgment of acquittal was entered.

**56. Legislative Power of the President.**—Although not connected with the legislative branch of the government, the President, through his recommendations and the actual or prospective use of his veto power, has great influence in shaping legislation. His commanding position as head of the nation, party leader, and the distributor of federal patronage often enables him to force through Congress measures which he recommends, especially if they are popular with the people. Under the leadership of Presidents Roosevelt, Taft, Wilson, and Harding much of the most important recent federal legislation has been enacted. The President has become in fact in the largest sense a lawmaker, especially when the party to which he belongs has a majority in Congress.

Besides his veto the President uses his messages to Congress as a direct means of influencing legislation. The effect of the President's message on legislation or other congressional action will depend, of course, upon his personal influence, and also upon the nature of his recommendations. Congress is free to take such action upon the message as it sees fit. One

of the most important functions of the President's message is to inform the public and to mould public opinion. By reason of his official position the President has immense influence with the public. His message is at once printed in full in all the leading newspapers, and thus instantly commands the attention of the whole nation. If the views of the President as expressed in his message meet with general approval, his recommendations become almost mandatory upon Congress, which is extremely sensitive to public opinion. Presidents Washington and Adams delivered their annual addresses to Congress in person, the occasion being one of some ceremony. President Jefferson, who was not a good public speaker, sent a written address, which was read to each house by its clerk or secretary. This example was followed by all of his successors until President Wilson, an accomplished speaker, revived the original practice and delivered in person his first annual address to Congress in 1913.

57. **Succession to the Presidency.**—The Constitution provides that: "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve upon the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected." Except to be in waiting, so to speak, as a possible successor to the President, the Vice-President has no other duties than as presiding officer of the Senate. In 1921, however, President Harding added Vice-President Coolidge to his cabinet.

No President has ever resigned or been removed from office, but five Presidents have died in office and been succeeded by the Vice-President. No way of determining what constitutes inability to act as President has been provided by law. Twice the question has become a practical one. President Garfield was shot on July 2, 1881, and totally disabled until his death on

September 19, and President Wilson was disabled by illness for many months in 1919-1920. On neither of these occasions did the Vice-Presidents assume the duties of the President, and the country was thus for the time being, to all intents and purposes, without an executive head. Congress has fixed the order of presidential succession in case of the removal, death, resignation, or inability of both President and Vice-President as follows: secretary of state, secretary of the treasury, secretary of war, attorney-general, postmaster-general, secretary of the navy, secretary of the interior.

### Questions

1. How is the President nominated and elected? Give some reasons for and against an amendment to the Constitution making the President's term six years, without eligibility for re-election.
2. What is the cabinet? Has it any authority? Name four members of the present cabinet.
3. Mention the principal powers and duties of the President.
4. How are appointments to office made? Explain how the Senate really controls the selection of most appointed officials. What is the "courtesy of the Senate"?
5. What officers are removable by the President? May a competent and faithful officer be removed before his term has expired? How may the President be removed; a federal judge?
6. Explain how the President takes part in the making of laws.
7. In case of the death of the President, who succeeds him? What if his successor should die also? How if the President should become insane?

## CHAPTER VI

### **EXECUTIVE DEPARTMENTS AND AGENCIES**

**58. In General.**—The establishment of executive departments for the administration of the government was taken for granted by the framers of the Constitution, which impliedly provides for their creation by express references to heads of departments. Upon the inauguration of the new government in 1789 Congress provided for the Departments of State, the Treasury, and War, and the office of Attorney-General. The federal post-office was already in existence under a postmaster-general, but was not put on a permanent basis until 1794. From time to time other executive departments have been established, and many bureaus, commissions, or offices have been created.

The work of the executive branch of the government is carried on by the President, the executive departments, the various boards and commissions, and a great number of individual officers. The enumeration of these departments and agencies will serve to convey some idea of the vast amount of work that is performed by the federal government. The establishment of new bureaus and offices as occasion demanded and their assignment to various existing departments in some cases, has occasionally produced incongruities, such as the assignment of the Public Health Service and the office of the Supervising Architect to the Treasury Department. From time to time executive agencies are transferred from one department to another or to newly created departments.\*

\* The *Congressional Directory* gives the best account of the working forces of the federal government. It contains biographical sketches of members of Congress and a list of the civil officers, a general description of the various departments, etc. It is published several times a year by Congress, and copies may be obtained through members of Congress or it may be purchased at a nominal price from the superintendent of documents, Government Printing Office, Washington, D. C.

There are now ten executive departments, which, with the dates of their establishment, are as follows:

1. The Department of State.....	1789
2. The Department of the Treasury.....	1789
3. The Department of War.....	1789
4. The Department of Justice.....	1789, 1870
5. The Post-Office Department.....	1794, 1829
6. The Department of the Navy.....	1798
7. The Department of the Interior.....	1849
8. The Department of Agriculture.....	1889
9. The Department of Commerce.....	1903
10. The Department of Labor.....	1913

**59. The Department of State.**—The head of the Department of State is the secretary of state. He has charge, under the direction of the President, of the administration of the foreign affairs of the country, including the negotiation of treaties, etc., with other governments, and the direction of the diplomatic and consular service. He is also the medium of correspondence between the President and the governors of the states; he has the custody of the great seal of the United States, and countersigns and affixes the seal to executive proclamations, officers' commissions, and other documents requiring such authentication.

**60. The Department of the Treasury.**—The head of the Treasury Department is the secretary of the treasury. The most important officers and agencies under him are the comptroller of the treasury, the treasurer of the United States, the commissioner of internal revenue, the director of the mint, the comptroller of the currency, the auditors for the several executive departments, the register of the treasury, the supervising architect, also the Bureau of Engraving and Printing, the Coast Guard, the Public Health Service, the Federal Farm Loan Board, and the Bureau of War Risk Insurance. The secretary of the treasury has charge of the national finances. He also attends to the coining of money and the printing of paper money, bonds, postage-stamps, etc., and administers the

Coast Guard and Public Health Services, and directs the construction and maintenance of public buildings.

61. **The Department of War.**—The secretary of war is the head of the War Department, and performs such duties as are



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PRESIDENT HARDING AND HIS CABINET.

required of him by law or by the President concerning the military service. The organization of the Department of War is elaborate, the most important single agency being the general staff composed of army officers. Under the War Department belong the Bureau of Insular Affairs and the United States Military Academy.

62. **The Department of Justice.**—The attorney-general is the head of the Department of Justice and the chief law officer of the government. He represents the United States in all legal matters. The attorney-general has been a member of

the President's cabinet since 1789, but the Department of Justice, with the attorney-general at its head, was not established until 1870. Besides the attorney-general, there are also in the department a solicitor-general and various other legal officers.

**63. The Post-Office Department.**—The postmaster-general is the head of the Post-Office Department. This department was in existence under the Articles of Confederation, and was put on a permanent basis by Congress in 1794, but the postmaster-general was not made a member of the President's cabinet until 1829.

**64. The Department of the Navy.**—The secretary of the navy is the head of the Navy Department and has general superintendence of the navy of the United States and performs such duties as may be assigned to him in that connection by the president. The United States Naval Academy belongs to this department.

**65. The Department of the Interior.**—The secretary of the interior is the head of the Department of the Interior, which has charge of a number of more or less unrelated matters. Belonging to this department are the General Land Office, which has charge of the public lands; the commissioner of Indian Affairs; the Pension Bureau; the Patent Office;\* the Office of Education;† the Geological Survey; the Reclamation Service; the Bureau of Mines; and the National Park Service.

\* The commissioner of patents has charge of the Patent Office, from which patents are issued to inventors. A patent entitles the holder to the exclusive right to control the manufacture and sale of the patented article for a period of seventeen years. To obtain a patent the services of a patent lawyer are almost a necessity.

† An odd function of the commissioner of education is the supervision of the reindeer industry in Alaska. The introduction of reindeer from Siberia into Alaska for the benefit of the natives has been one of the most humane and successful of the minor undertakings of the federal government. It was found that the natives were suffering for want of the means of sustenance, and to meet this situation the importation of reindeer from Siberia was begun in 1892, the total number introduced being 1,200. By 1916, under government protection, these had increased to over 80,000, and they are still increasing. They supply food, clothing, and service to the natives.

**66. The Department of Agriculture.**—The secretary of agriculture is the head of the Department of Agriculture, the general design and duties of which are to acquire and diffuse among the people of the United States useful information on subjects connected with farming, stock-raising, fruit-growing, and the like. This department was first established in 1862 as a department in charge of a commissioner of agriculture. In 1889 it was made one of the executive departments, and its head became a member of the cabinet as secretary of agriculture. The Weather Bureau was transferred to it from the War Department in 1891. Some other divisions of the Department of Agriculture are the Bureaus of Animal Industry, Plant Industry, Chemistry, Soils, Entomology, Biological Survey, Crop Estimates, Public Roads, and Markets; also the Forest Service.

**67. The Department of Commerce.**—The secretary of commerce is the head of the Department of Commerce. This department was established in 1903 as the Department of Commerce and Labor, but in 1913 the work of the department was divided and a portion of it transferred to a new department, known as the Department of Labor. The functions of the Department of Commerce are indicated by the enumeration of its several bureaus, etc., as follows: Bureaus of the Census, Foreign and Domestic Commerce, Standards, Fisheries, Lighthouses, and Navigation; also the Coast and Geodetic Survey, and the Steamboat Inspection Service.

**68. The Department of Labor.**—The secretary of labor is the head of the Department of Labor. This department was established in 1913 upon the division of the Department of Commerce and Labor. The purpose of the department is to foster, promote, and develop the welfare of the wage-earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment. There are four bureaus: the Bureau of Labor Statistics, the Bureau of Immigration, the Bureau of Naturalization, and the Children's Bureau.

**69. Independent Executive Agencies.**—In addition to the ten executive departments already described, there are a number of other independent executive agencies, established by law, for carrying on the work of the government in various lines. Some of the most important of these have been created within the past ten years, and the rapid multiplication of these agencies strikingly indicates the increasing activity of the government.\*

*The Interstate Commerce Commission* was created in 1887 with five members, since increased to nine with greatly increased powers. The commission has jurisdiction over all common carriers engaged in interstate commerce, such as railroads, steamboats, and other vessels, express and sleeping car companies, also telegraph, telephone, cable, and wireless companies, pipe-lines for the transportation of oil, bridges, and ferries used in interstate commerce, etc. The jurisdiction of the commission covers in a large degree the supervision of the business of interstate commerce and is constantly being enlarged. The commission is wholly independent of the Department of Commerce.

*The United States Railway Labor Board* was created in 1920 and consists of nine members. This board has jurisdiction to hear and adjust disputes between the carriers and their employees involving grievances, rules, working conditions, wages, etc.

*The Federal Trade Commission*, composed of five members, was established in 1914. The commission regulates, under statutes, persons, partnerships, and corporations engaged in interstate and foreign commerce, except banks and common carriers, banks being under the control of the Federal Reserve Board and the comptroller of the currency, and common carriers under that of the Interstate Commerce Commission.

\* During the World War various temporary war agencies were established, such as the United States Railway Administration, the War Finance Corporation, the Alien Property Custodian, the Food Administration, the Fuel Administration, etc. These have gone, or are going, out of existence.

The Trade Commission enforces the laws against unfair competition in commerce, and conducts investigations and makes reports on domestic and foreign trade conditions.

*The Federal Reserve Board*, created in 1913, consists of seven members, including the secretary of the treasury and the comptroller of the currency. The function of the board is to exercise general supervision over the Federal Reserve Banks established under the Federal Reserve Act, and to perform various other duties prescribed by the statute.

*The United States Tariff Commission*, composed of six members, was established in 1916. Its duty is to investigate and report on the fiscal and industrial effects of the customs laws, and their relation to the federal revenues, and also to investigate the tariff relations of the United States with foreign countries.

*The Federal Board for Vocational Education* was created in 1917. It consists of the secretaries of agriculture, commerce, and labor, the United States commissioner of education, and three other members representing, respectively, the manufacturing and commercial interests, the agricultural interests, and labor. The statute makes appropriations to be used in co-operation with the states in promoting vocational education. By the federal Rehabilitation Act of 1919 the Vocational Board is also charged with the duty of furnishing vocational rehabilitation to members of the military or naval forces of the United States disabled in the World War. Liberal provision is made for the thorough education of disabled men for professional, industrial, or commercial life.

*The United States Shipping Board*, composed of five members, was established in 1916 for the purpose of encouraging, developing, and creating a naval auxiliary and reserve and a merchant marine. It was created primarily as a war agency.

**70. The Civil Service Commission.**—The Civil Service Commission was created by the Civil Service Act of January 16, 1883. It consists of three commissioners appointed by the President, by and with the advice and consent of the Senate,

not more than two of whom may belong to the same political party.\*

The object of the Civil Service Act was to substitute the "merit system" of making appointments to the federal civil service for the "spoils system." President Washington made fitness for the office the test to be applied in making appointments, and this policy was continued under his successors until about 1830. It is stated that the first six Presidents removed altogether only 112 federal officers. Andrew Jackson, the seventh President, favored the principle of rotation in office, and under him was established the "spoils system," which was in force from about 1830 until the adoption of the Civil Service Act in 1883, and is still largely in operation. The phrase of Senator William L. Marcy, of New York, "to the victors belong the spoils," has given the name to the system. Immediately upon a change of administration, especially where there was also a change of party, wholesale removals from office took place, and new appointments were made without reference to the personal qualifications of those removed or appointed. Appointment to office was the recognized reward for political service to the successful candidates or party. This, of course, led to inefficiency in the public service, and the abuse became so great that finally Congress passed the Civil Service Act to correct it.

The duties of the Civil Service Commission are to aid the President in preparing rules for carrying the statute into effect, especially by providing for competitive examinations for testing the fitness of applicants for appointments. The President has authority to determine what branches of the service shall be under the civil service regulations. In 1883, 16,000 persons were brought within the operation of the act. From time to time additional branches of the service are brought within the

\* The United States Bureau of Efficiency, established in 1916, though an independent agency, is related in its work to the Civil Service Commission. Its function is to improve the service in the executive departments at Washington.

act. President Taft, for example, added fourth-class post-masters, of whom there are about 50,000. In 1916, just before the United States entered the Great War, there were about 462,000 persons employed in the civil service of the United States, not counting those employed in the outlying dependencies and possessions. The federal officers and employees in the city of Washington numbered about 35,000. Of the total number in the United States, about 297,000 held competitive positions under the civil service regulations. The presidential appointments numbered about 11,000. The World War temporarily greatly increased the number of federal civil offices and employees. In 1919 the number was about 770,000, of whom about 100,000 were in Washington. Persons holding positions in the classified civil service are removable only for cause.

71. **Miscellaneous Institutions.**—Other institutions, boards, etc., administered by or composed of federal executive officials may be mentioned as further illustrating the activities of the federal government, as follows: the Smithsonian Institution; the National Museum; the Commission of Fine Arts; the United States Geographic Board; the Bureau of American Ethnology; the Library of Congress; the Government Printing Office; and the Pan-American Union. The Copyright Office is in the Library of Congress, and is in charge of a register of copyrights.\*

### Questions

1. Name the executive departments, and explain the functions of any three of them.
2. To what departments do the following bureaus, etc., belong: the Coast Guard; Bureau of the Census; Children's Bureau; Consular Service; Public Health Service; Forest Service; Bureau of Insular Affairs; Reclamation Service; Weather Bureau; comptroller of the currency; Pension Bureau?

\* Copyrights on books, pictures, music, etc., are granted for a period of twenty-eight years, and may be renewed for twenty-eight years more. Forms and directions for obtaining copyrights may be obtained from the register of copyrights. No lawyer is needed and the charge is nominal.

3. What is the Interstate Commerce Commission; the United States Railway Labor Board; the Federal Reserve Board?
4. What is the object of the Civil Service Act? What is the "spoils system"? When was it started? To what grades of positions does the Civil Service Act apply? Should foreign ambassadors or federal judges be appointed under civil service regulations?

## CHAPTER VII

### THE FEDERAL COURTS

**72. The Federal Judicial Power.**—The Constitution provides that: “The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.” Congress is also given power “to establish tribunals inferior to the Supreme Court.”

The federal judicial power, like the legislative and executive powers, is limited to certain specific subjects, which are enumerated in the Constitution. It extends to nine distinct classes of cases, as set forth in the Constitution as follows:

“The judicial power shall extend

- [1] to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;
- [2] to all cases affecting ambassadors, other public ministers and consuls;
- [3] to all cases of admiralty and maritime jurisdiction;
- [4] to controversies to which the United States shall be a party;
- [5] to controversies between two or more states;
- [6] between a state and citizens of another state;
- [7] between citizens of different states;
- [8] between citizens of the same state claiming lands under grants from different states; and
- [9] between a state, or the citizens thereof, and foreign states, citizens, or subjects.”

**73. The Federal Judges.**—The federal judges are appointed by the President, by and with the advice and consent of the Senate, and hold office for life ("during good behavior"). They may be removed from office only by impeachment proceedings, upon conviction of "treason, bribery, or other high crimes and misdemeanors." The mode of appointment and the dignity of the office have generally resulted in the making of good appointments and securing good men willing to serve, while the life tenure has given to the country an experienced and independent federal bench. On the whole, no feature of the federal constitutional system has been so successful as the judiciary.

There are (1921) three grades of federal judges: (1) the district judges, of whom there are ninety-nine; (2) the circuit judges, of whom there are thirty-three; and (3) the Chief Justice and the eight associate justices of the Supreme Court. A member of the Supreme Court is styled "justice," and a judge of an inferior court is "judge." The present salary of a district judge is \$7,500; of a circuit judge, \$8,500; of a Supreme Court justice, \$14,500, and of the Chief Justice, \$15,000. The salaries of the inferior judges are respectable, but the Supreme Court justices are not paid in proportion to the dignity of their office, and not nearly so much as the English judges of high rank. By statute, federal judges of all grades may resign and retire on full salary after they have served ten years and reached the age of seventy years. They may also retire without resigning, being subject to be called into occasional service. In the case of the permanent disability of a judge who will neither resign nor retire, another judge may be appointed to perform his duties.

**74. The Independence of the Judiciary.**—In any government it is of the utmost importance that the judges shall be independent, able, and upright. Upon them devolves the high function of interpreting and applying the laws and administering justice between individuals and between the individual and the state. But in the United States this importance is

greatly increased by the reason of the additional function of the courts to act as the guardians of constitutional liberty by preserving the limitations imposed by the Constitution upon the operations of the government. This they do by refusing to enforce unconstitutional statutes. But for the exercise by the federal courts of this function, it is hardly possible that the complex system of government established by the Constitution could have been maintained.

The ability and character of the federal judges is assured by the mode of their appointment. Only men of high standing in these respects are likely to be nominated by the President and confirmed by the Senate. Their independence is secured by the provision of the Constitution that: "The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office." The judges are thus assured of permanent positions and pecuniary support.

**75. Judicial Districts and Circuits.**—For judicial purposes Congress has divided the states into judicial districts, each state forming at least one district, and the larger states from two to four districts. The districts are confined to the boundaries of a single state, no district lying in two states. There are about eighty districts in all. There is a district court for each district. The states are grouped into nine judicial circuits, as follows:

*First Circuit*: Rhode Island, Massachusetts, New Hampshire, Maine, and Porto Rico.

*Second Circuit*: Vermont, Connecticut, and New York.

*Third Circuit*: Pennsylvania, New Jersey, and Delaware.

*Fourth Circuit*: Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

*Fifth Circuit*: Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

*Sixth Circuit*: Ohio, Michigan, Kentucky, and Tennessee.

*Seventh Circuit*: Indiana, Illinois, and Wisconsin.

*Eighth Circuit*: Nebraska, Minnesota, Iowa, Missouri, Kansas, Arkansas, Colorado, Wyoming, North Dakota, South Dakota, Utah, Arizona, New Mexico, and Oklahoma.

*Ninth Circuit*: California, Oregon, Nevada, Washington, Idaho, Montana, Hawaii, and Alaska.

**76. The Federal Judicial System.**—The details as to the establishment of the federal judicial system are left by the Constitution to Congress. The Constitution provides that there shall be one Supreme Court, but the number of judges who shall compose the court, their salaries, and when they shall hold terms of court are fixed by Congress. The Constitution defines the "original" jurisdiction of the Supreme Court, but its appellate jurisdiction is regulated by statute. As to the inferior federal courts Congress has full control. It may establish or abolish such courts, define and change their jurisdiction, etc., at will. Congress has power also to prescribe the rules of procedure in the federal courts, and has done so to some extent. The courts, however, especially the Supreme Court, are largely permitted by Congress to formulate their own rules. At present the federal judicial system consists of five courts or classes of courts, as follows:

*Courts of General Jurisdiction*—

The District Courts.

The Circuit Courts of Appeals.

The Supreme Court.

*Courts of Special Jurisdiction*—

The Court of Claims.

The Court of Customs Appeals.

**77. The District Courts.**—The district courts are the trial courts of the federal judicial system. They have jurisdiction of all cases, both civil and criminal, that may be tried in a federal court, except a few cases which must be brought in the Supreme Court, and cases coming within the jurisdiction of the Court of Claims and the Court of Customs Appeals. The district courts are courts of original jurisdiction, that is, a case

is begun and tried there in the first instance. Any decision of a district court may be reviewed by a higher court, and reversed or affirmed as the Appellate Court may decide. A few cases of special importance may be taken directly from the district court to the Supreme Court, but most cases must be



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taken first to the Circuit Court of Appeals, from which they may finally reach the Supreme Court. The district court is held by a single judge.

**78. The Circuit Courts of Appeals.**—For each of the nine circuits there is a Circuit Court of Appeals, with jurisdiction to review the decisions of the district courts of that circuit. Any decision of the district courts may be taken up on appeal to the Circuit Court of Appeals of the circuit in which the district court is located, though a few important cases, as already stated, may be taken directly to the Supreme Court. The Circuit

Courts of Appeals have no original jurisdiction. The main function of these courts is to relieve the Supreme Court by disposing of appeals from the district courts. Otherwise the Supreme Court could not handle the enormous amount of appellate business that would come to it. Ordinarily the decision of the Circuit Court of Appeals will finally dispose of a case brought to it from the district court, but provision is made for review by the Supreme Court, so that it is possible for any case in the Circuit Court of Appeals to reach the Supreme Court. The Circuit Court of Appeals consists of three judges, of whom two constitute a quorum. To each of the nine circuits is allotted a member of the Supreme Court, who occasionally sits as a member of the Circuit Court of Appeals.

**79. The Supreme Court.**—The Supreme Court is the only court specifically provided for by the Constitution. It is provided that there shall be one Supreme Court, but all the details of its organization are left to Congress. For many years the court has consisted of the Chief Justice and eight associate justices. There is one term of the court annually, which commences on the first Monday in October, and such adjourned or special terms as the court may find necessary for the despatch of business. The court meets in the Capitol building at Washington.

The Supreme Court has original jurisdiction in two classes of cases, as provided by the Constitution; namely, "in all cases affecting ambassadors, other public ministers, and consuls, and those to which a state may be a party." This means that such cases may be begun and finally disposed of in the Supreme Court without having first been tried in a lower court. No cases affecting ambassadors, etc., have ever been brought in the Supreme Court, but there have been many suits between states. The appellate jurisdiction of the Supreme Court is determined entirely by Congress. It includes the review of the decisions of the various other federal courts, and of the highest courts of the District of Columbia, Alaska, Hawaii, Porto Rico, and the Philippine Islands. The Supreme Court may also re-

view the decisions of the state courts on questions arising under the Constitution of the United States.

**80. The Court of Claims.**—A sovereign government may be sued only with its own consent, and then only in the courts, upon the terms, and in the cases included within the consent given. The states of the Union have generally given their consent in the state constitutions to suits by private individuals against the state in certain state courts, and by consenting to the federal Constitution they have given consent to suits against them in the federal courts as provided by the Constitution. The United States may sue as plaintiff in either the state or the federal courts, but may not be sued in any state court.

Congress has consented to suits against the United States only in the Court of Claims, which was established in 1855 to entertain such suits. Prior to the establishment of this court, claims against the United States could be prosecuted only by petition to Congress. The jurisdiction of the Court of Claims, as defined by statute, extends only to claims arising out of contracts with the federal government. The United States has never consented to be sued for the torts or wrongful acts of its officers, agents, or employees. Many suits have been brought in the Court of Claims on government contracts, or for salaries, etc. Congress regularly appropriates money to pay the amounts of judgments of the court against the United States. The court consists of a chief justice and four other judges, and sits at Washington.

**81. The Court of Customs Appeals.**—The Court of Customs Appeals was established in 1909, and consists of a presiding judge and four associate judges. The court sits at Washington and at such other places as the court may itself from time to time designate. This court has exclusive appellate jurisdiction to review by appeal final decisions of the boards of general appraisers of merchandise under the customs laws as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty thereon. The

decisions of the Court of Customs Appeals may be reviewed by the Supreme Court in certain cases.

### Questions

1. Name the courts of the federal judicial system. What federal courts sit in your state? Name the judges.
2. Name the chief justice and three associate justices of the Supreme Court. How long do the federal judges hold office?
3. Name three classes of cases which come within the jurisdiction of the federal courts.

## II.—THE STATE GOVERNMENTS

### CHAPTER VIII

#### THE STATES IN GENERAL

82. **In General.**—The position of the states as members of the Union is peculiar. To foreigners the states are mere subdivisions of the United States, about as counties are subdivisions of a state. But this is not their true position under the Constitution. As to all matters not intrusted to the federal government, the states are sovereign, except that they may not withdraw from the Union. The people of the United States form a single nation, and could reduce the states to a position of subordination to the general government by adopting a constitution so providing, but this would be a revolutionary change in our form of government. Under the Constitution as it is, the government of a state is as sovereign and supreme within its own sphere as is the government of the United States within its sphere. In matters within federal jurisdiction, the Constitution, laws, and treaties of the United States are the supreme law of the land, but in all other matters the law of the state is supreme within its borders. The state government gets no authority whatever from the United States, and is not subject to the control of the federal government as to anything within the authority of the state.

All the state governments are organized on the same general plan, which is the same as that of the federal government. There is a written constitution, and the powers of government are distributed between the legislative, the executive, and the judiciary departments. There are, however, many variations in details, and changes are constantly being made. Upon the whole, state governments have perhaps not been so successful as the federal government, but the subject of state government

is receiving much attention, and improvement is to be expected. Experiments in government are being made in the various states which may lead to good results. One of the advantages of the system of separate independent states is that it affords an opportunity to make such experiments in a single state on a large enough scale to prove or disprove the value of the device being tried, without finally committing the whole country to its adoption.

If the experimental plan in government does not work well, the people of the state may reject it and try something else, or go back to their former plan. But it is different with the United States as a whole. Changing the federal Constitution is too difficult to justify the adoption of unproven devices for the country at large. It is too hard to correct mistakes. It would be unwise, for example, to adopt the initiative or the referendum for the federal system while their usefulness has not yet been proved by the experience of the states. The separate states constitute, so to speak, political laboratories in which theories of government may be tested. The United States and each state may profit by studying the experience of states in which new governmental schemes are being tried, but need not be in a hurry to adopt any of them while the experiment is still going on.

**83. Political Self-Sufficiency of the States.**—The several states are each politically self-sufficient. A state could exist and its government could function although neither the United States nor any other state existed. Thirteen of them existed in fact as potentially independent states before the establishment on a firm constitutional basis of the government of the United States, and each of the states since admitted into the Union stands on an equal footing politically with the original states. The federal Constitution might be abolished, and the government of the United States thus cease to exist, but this would not in the slightest degree impair the government or political existence of the states.

The only effect of the abolishment of the Constitution would

be to restore to the states the powers now taken from them by that instrument, and thus make them completely sovereign. A condition would then arise in North America similar to that existing in South America; instead of the middle portion of the continent being occupied by one people, its inhabitants would constitute a number of separate nations, peoples of the sovereign states of New York, New Jersey, Ohio, etc., some of which are superior in population or resources to many foreign countries. Substantially this condition existed upon the fall of the Confederate Government in 1865 and before the re-establishment of the civil government of the United States in the late seceding states. The overthrow of the Confederate Government did not result in anarchy or confusion in the states composing the Confederacy, but orderly civic life went on under the several state governments, which did not cease to function when the Confederacy fell.

**84. Dependence of the Federal Government Upon the States.**—The United States Government, although fully equipped with legislative, executive, and judicial departments, is not complete in itself. It has only the few powers conferred upon it in the Constitution, and if the state governments were suddenly abolished, the country would be plunged into anarchy, or become subject to military government by the forces of the United States. Congress would have no power to fill the gap caused by the disappearance of state authority and law. But this is not all. The people of the states choose the President and the members of Congress, and all other federal officers are appointed by or under the authority of the President and Congress. If all the states should omit to hold elections for presidential electors and congressmen, there would be no federal government. The states elect their own legislatures and governors, but the United States does not. The federal government is dependent for its existence upon the continued existence of the states. If the states should for any reason cease to function, the government of the United States would automatically expire. As Chief Justice Chase declared, "The

states disunited might continue to exist. Without the states in the Union, there could be no such political body as the United States"; and, again: "The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible states."

**85. Political Equality of the States.**—Under the federal Constitution all the states are politically equal, and in this respect there is no distinction between the original states, which established the federal government, and the states which Congress has since admitted into the Union. In political power, dignity, and sovereignty all stand upon an equal footing. Nor can Congress in admitting new states impose valid conditions upon them which would prevent this equality. The equality of the states in the Senate is secured by the provision that "no state, without its consent, shall be deprived of its equal suffrage in the Senate." As no state could be expected to give such consent, this is the one unamendable provision of the Constitution.

**86. The Reserved Powers of the States.**—The Tenth Amendment to the Constitution provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people." This means that the states have all the usual powers of sovereign nations except those which have been exclusively granted to the United States or prohibited to the states. The reserved powers of the states comprise most of those which affect the citizen most closely in his daily life.

In the distribution of powers between the federal and state governments a far larger share has fallen to the states than to the United States. Only a few powers have been granted to the federal government, and still fewer have been prohibited to the states. The powers of the states are far more extensive and complete than those of the United States. This is as it should be. The government of a state is almost wholly under the control of the people of the state, while their control over the fed-

eral government is shared with the citizens of other states. It is right, therefore, that matters which concern the citizens of the state most vitally and exclusively should be subject to the jurisdiction of the state government rather than that of the nation.

**87. Federal Guaranties to the States—Republican Form of Government.**—The Constitution provides that: “The United States shall guarantee to every state in the Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.”

If the Union was to be real and lasting, it was essential that all the states should have the same general kind of government; a union of republics and monarchies, for example, could scarcely be successful. There was unanimous agreement that the general government should be republican in form, and all the states had this form of government when the Constitution was adopted. There was a possibility, however, that some other form of government might be established in individual states, either through revolution or through foreign interference. This might not only destroy the liberty of the people of the state, but would necessarily weaken the Union. Very properly, therefore, the power and duty of preserving republican government in the states is granted to and imposed upon the United States. In all other respects the people of the several states are left free to organize their own governments as they see fit, and to change them at pleasure.

There has been some difference of opinion as to precisely what constitutes a republican form of government in the constitutional sense, but the main idea seems to be that it is a government deriving all its powers directly or indirectly from the people, and administered by officers chosen by the people for limited terms. It is opposed to a monarchy or aristocracy, or any other form of government in which the people are not sovereign. The form of government existing in the states when

the Constitution was adopted was accepted by the constitutional convention as republican, and this form, without substantial change, is still preserved. The suffrage has been greatly extended, and some of the states are experimenting with the initiative and referendum, but in so far as these innovations are effective to bring the government more completely into the control of the whole body of the people, they perhaps render it more rather than less republican in form. Direct legislation makes the government less a *representative* government, but *theoretically* the representative principle is probably not necessary in a republican form of government. However, government through representatives seems to be the only form of government by the people that will work in practice.

**88. Protection Against Invasion and Domestic Violence.—** The states are forbidden, without the consent of Congress, to keep troops or ships of war in time of peace, or to engage in war, unless actually invaded, or in imminent danger as will not admit of delay. In these circumstances the provision that the United States shall protect each of the states against invasion is both reasonable and necessary. Moreover, in protecting a state against invasion by a foreign power the United States would be protecting itself. In affording this protection the war powers of the United States would be employed, and no previous application by the state is necessary.

Protection against domestic violence stands on a different footing. The guaranty neither empowers nor requires the federal government, of its own motion, to maintain order in the states. Only upon application of the state legislature, or of the governor, when the legislature cannot be convened, has the federal government the right to use its power to suppress domestic violence in the states, unless the authority of the federal government is in some way interfered with. Federal troops have frequently been sent at the request of the state to suppress violence, especially in connection with disturbances growing out of labor troubles. Of course the federal government may use troops in any state without application from the state to

maintain the authority of the federal government. Thus in 1894 President Cleveland sent United States troops to Chicago, over the protest of the governor of Illinois, to prevent a mob of strikers from interfering with the running of trains carrying the mails or engaged in interstate commerce. A hundred years before (1794) President Washington sent a force of 15,000 men into western Pennsylvania to suppress the revolt against the execution of the federal internal revenue law known as the "Whiskey Rebellion."

The fact that the protection of life and property within a state is a function of the state government and not of the United States has led to embarrassment where the victims of mob violence have been citizens of foreign countries. The states having no relations with foreign powers, it is the duty of the federal government, especially when made the subject of treaty, to protect foreigners in this country, or at least it is to the federal government that foreign governments must look for the performance of this duty and for restitution for injuries. On several occasions troubles of this sort have been the subject of diplomatic correspondence. One of the best-known cases is the lynching of several Italians by a mob in New Orleans in 1891 on account of the murder of the chief of police of the city by members of a secret Italian organization known as the Mafia. The Italian Government demanded redress, but Mr. Blaine, then secretary of state, declared that the United States had no jurisdiction of the matter. As the Italian Government could not deal with the state government, there was no redress possible. In displeasure, Italy for a time withdrew her minister from Washington. The United States Government, while disclaiming all liability, finally, as an act of grace, paid a money indemnity to the families of the murdered Italians. There have been other similar instances, and this condition of things is plainly unsatisfactory. It could be remedied by an act of Congress making offenses against the treaty rights of foreigners cognizable in the federal courts. Such an act would undoubtedly be constitutional.

**89. Interstate Relations.**—During the short interval between the Declaration of Independence (1776) and the adoption of the Articles of Confederation (1781) the states sustained toward each other substantially the relation of independent sovereign nations. They were united only in an informal league or alliance, almost the sole function of which was to carry on the war with Great Britain. Under the Articles of Confederation their union was still only a "firm league of friendship," each state retaining "its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled."

Under the Constitution the states are scarcely less independent of each other. For most purposes they stand toward each other in the relation of foreign states. The state governments are absolutely independent of each other, and also of the federal government, except in matters of federal authority. The public officers of one state have no authority whatever in other states. The Constitution, however, contains several provisions affecting the relations of the state. Besides an obsolete provision for the return of fugitive slaves, and a provision respecting the privileges and immunities of citizens, which will be discussed later, there are three important provisions which will be now explained.

**90. The Full Faith and Credit Clause.**—It is provided that: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and judicial proceedings shall be proved, and the effect thereof." The public acts referred to are the acts of the state legislatures, the records are the registration of deeds, wills, etc., legislative journals, etc., and the judicial proceedings are the decrees, judgments, or orders of courts. Congress has prescribed the manner in which these shall be authenticated.

The state courts are quite often called upon to enforce the

statutes of other states in controversies over contracts or property, and in such suits the statutes are usually ascertained from printed statute-books published by authority of the state under its seal, though this is not the exclusive mode of proof. It may also become necessary to enforce the judgment of a court of another state. Under the "full faith and credit clause" the judgment of a court of any state must be given the same effect in every other state as it has in the state in which it was rendered. Thus a valid decree of divorce granted in one state must be recognized by the courts of every other state. But a foreign judgment (*i. e.*, judgment of a court of another state) is entitled to only the credit that it would be entitled to in the state where rendered, and if not valid there, will not be valid anywhere else. Thus a judgment rendered by a court having no jurisdiction of the cause is of no force anywhere. A familiar case is that of a divorce decree obtained in a state of which the plaintiff was not a *bona-fide* resident. Such a decree is *legally* void, though many such decrees are obtained and usually no one questions their validity. But a person who marries some one else upon the strength of such a divorce is guilty of bigamy and could be punished therefor. Unfortunately *society* tolerates what the *law* forbids.

91. **Extradition.**—Interstate extradition is the delivery by one state to another of fugitives from justice. Since the criminal laws of a state and the authority of its officers are effective only within the state, a person who has committed a crime in one state could escape punishment by withdrawing to another state unless some provision were made to secure his return to the state in which the crime was committed. Accordingly the Constitution provides that: "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he has fled, be delivered up to be removed to the state having jurisdiction of the crime." This provision is not self-executing, and acts of Congress and of state legislatures provide for carrying it into effect.

Under this provision a person who has committed a crime in one state and goes to another state may be arrested where he is found, and upon the requisition of the governor of the state in which the crime was committed it is the duty of the governor of the asylum state to surrender the fugitive to the authorities of the state from which he has fled. There is, however, no way of enforcing the performance of this duty, and in a number of instances governors have refused to surrender fugitives from justice to other states. A noted instance was the refusal of the governor of Indiana to deliver to the Kentucky authorities ex-Governor Taylor of Kentucky, who was charged with complicity in the murder of Governor Goebel, the refusal being on account of the belief that Taylor would not receive a fair trial.

International extradition is provided for by treaties between the United States and most of the other civilized powers.

**92. Agreements or Compacts Between States.**—The states are absolutely forbidden by the Constitution from entering into "any treaty, alliance, or confederation," that is, with a foreign power, and it is also provided that: "No state shall, without the consent of Congress, . . . enter into any agreement or compact with another state, or with a foreign power." The purpose of this prohibition seems to have been mainly to prevent agreements between states which might tend to increase the power of particular states or groups of states to the possible detriment of other states or of the Union. An important class of contracts between states coming within this provision are contracts relating to boundaries between states. All contracts by a state are made by its legislature or by duly authorized officers or agents of the state.

**93. State Constitutions—In General.**—The governments of the thirteen original states are older than that of the United States. Even before the Declaration of Independence on July 4, 1776, four of the states had adopted constitutions, and before the Articles of Confederation were ratified (1781) all of them had done so. It was almost nine years after the adoption

of the last of the first state constitutions that the present government of the United States went into effect (1789). Rhode Island and Connecticut continued to use their colonial charters until 1842 and 1818, respectively, substituting the authority of the people for that of the king.

These early constitutions were all adopted by revolutionary conventions or congresses without submission to the people, except that of Massachusetts, which was framed by a convention chosen for that purpose and ratified by vote of the people. Some of these hastily formed constitutions proved defective and were soon amended or superseded by other constitutions. Several of them, however, stood the test of experience. The Virginia constitution of 1776 remained in force until 1830, that of North Carolina until 1834, and that of New Jersey until 1844. Since the Civil War all the new state constitutions except that of Virginia (1902) have been ratified by popular vote.

**94. Contents of State Constitutions.**—The early state constitutions were short, and, like the federal Constitution, dealt only with general principles. The most carefully matured of these constitutions, that of Massachusetts, contained only two parts, a bill of rights and the political framework of the state government. There were no directions to or limitations upon the legislature, it being provided only that the legislature should enact "all manner of wholesome and reasonable laws as they may judge for the benefit and welfare of this state." In enacting laws the legislature was restrained only by the bill of rights. Some of the first constitutions did not contain even a bill of rights. Modern state constitutions are voluminous documents. Subject to considerable variation in the several states, the principal usual features or parts of a state constitution are as follows:

(1) *Preamble.* This corresponds to the preamble of the federal Constitution, and states the reasons or purpose of the people of the state in adopting the constitution, together with the enacting or ordaining clause.

(2) *Bill or Declaration of Rights.* This corresponds to the similar provisions of the federal Constitution. The number of provisions varies from fifteen in Louisiana to forty-five in Maryland. The most famous of these bills is that written by George Mason of Virginia, and adopted by the Virginia convention on June 12, 1776. Jefferson had it before him when he drafted the Declaration of Independence, and it has served as the model for similar bills of other states, and also for the first eight amendments to the federal Constitution. Among other things it declares: "That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles."

(3) *Organization of the State Government.* Most of the state constitutions provide expressly for the separation of the legislative, executive, and judicial powers, but this provision is unnecessary, for all of the constitutions make this separation by providing for the three branches of the government. The usual order, as in the federal Constitution, is legislature, executive, and judiciary, but in several states the executive is placed first. This part of the constitution distributes the legislative, executive, and judicial powers among the several departments of the government. Besides the three main branches, modern constitutions frequently provide for various boards and commissions.

(4) *Suffrage and Elections.* The right of suffrage is regulated wholly by the state, as to both state and national elections, except that, under the Fifteenth and Nineteenth Amendments, the right may not be denied on account of race and sex. Elections also are under state control, except for the limited control of national elections by Congress.

(5) *Restrictions on the Legislature.* Besides the general restrictions contained in the bill of rights, numerous specific restrictions are placed upon the legislature. The mode of enacting laws is prescribed in detail, and certain kinds of legislation are forbidden.

(6) *Miscellaneous.* Common provisions provide or require the legislature to provide for the regulation of the militia, taxation, and finance, education, municipal corporations, private corporations, the public health, labor, railroads and other public service agencies, banking, etc. Many of these provisions are ordinary legislation, and have no proper place in a constitution.

(7) *Amendment and Revision.* All the constitutions provide a mode of adopting amendments, and in most of them provision is made for a general revision of the constitution by a convention called for that purpose.

(8) *Schedule.* This is a sort of appendix to the constitution containing temporary provisions to cover the period of transition from the old to the new constitution, or for putting the new constitution into effect.

Most of the state constitutions conform more or less closely to the general outline given above. Nearly half of the constitutions contain also an article defining the geographical boundaries of the state, this being inserted in accordance with the enabling act providing for the admission of the state. This article is not found in the constitutions of the older states. Some of the constitutions depart somewhat radically from the normal type, for example, the constitution of Oklahoma. The adoption of the initiative and referendum is perhaps the most radical of recent innovations in state constitutions. Some of the modern additions are the legitimate outgrowth of the vast development of social, economic, and industrial life since the first constitutions were adopted. So much of the new matter, however, as is merely statutory in character has been inserted largely through distrust of the legislature, as is true also of many of the restrictions upon the legislative power. Properly, no such matter belongs in a constitution. The growth of state constitutions may be shown by a few figures. The Virginia constitution of 1776 contained about 3,200 words, while that of 1902 contains 35,000 words, including a 6,000-word article on corporations. The New Hampshire constitution of 1776, ex-

cluding the preamble, contained 600 words, the Louisiana constitution of 1898 contains 45,000, and the Oklahoma constitution of 1907 about 50,000.

**95. Amendment and Revision of State Constitutions.**—Several of the original constitutions contained no provision for amendments, but the necessity of the case soon led to the exercise by the people of their inherent right to change their form of government, and amendments or revisions of the state constitutions were made in numerous instances. All the present state constitutions provide for their own amendment or revision. The process of amendment varies in details in the several states. In general, amendments are proposed by the legislatures and ratified by vote of the people.\* Usually amendments may be proposed in either house of the legislature, and may be adopted by a majority, by three-fifths, or by two-thirds vote as the state constitution may provide. In a few states an amendment must be passed by two successive legislatures before being submitted to the people. The popular vote requisite for adoption varies, being either a majority, three-fifths, or two-thirds. Special restrictions are sometimes imposed, as that not more than a certain number of amendments may be submitted at one time, or that if two or more are submitted at one time, the electors shall be permitted to vote on each one separately.

\* In 1920 constitutional amendments relating to the financing of public roads and schools were submitted to the people of Virginia. A very active campaign to secure their adoption was conducted by those interested, there being no organized opposition. No attempt was made to show the necessity for the amendments, nor was it practicable for the average voter to learn even the text of the amendments or the nature of the proposed changes. The appeal was based almost entirely upon the desirability of good roads and schools. The author wrote a letter to an influential paper asking, on behalf of the public, for some information that might enable the people to vote intelligently. No attempt was made to supply this, and one of the leading advocates of the roads amendment afterward told the writer that he had seen the letter, but he and his associates had deliberately refrained from replying because they did not wish to get into any discussion with voters capable of thinking for themselves. He stated frankly that they were relying upon the ignorance and apathy of the electorate. All the amendments were adopted by a large majority.

In most of the states provision is made for a general revision of the constitution by a convention called for that purpose, and in some states it is provided that the question of holding such a convention shall be submitted to the people periodically, as at intervals of every ten or twenty years.\*

### Questions

1. Is your state a sovereign state? What would become of the United States Government if all the state governments were abolished and nothing put in their place? What would become of the government of your state if the United States Government and Constitution were abolished?

2. Could Congress admit Porto Rico as a state of the Union? When Congress admitted Oklahoma as a state it was stipulated that the location of the state capital should not be changed before a certain date some years later. Before that time the people of the state wished to change the capital to another city. Did they have the right to make the change?

3. In a general way what powers belong to the states under the federal Constitution? Which has the larger share of powers, the United States or the state?

4. If a majority of the people of your state wished to set up a monarchical form of government, would the minority have to submit?

5. If a riot occurs in your state may the President of the United States send federal troops to suppress the disorder?

6. If a man commits murder in Kansas and flees to Colorado, may he be tried and punished in Colorado for the murder? May the Kansas au-

\*In 1915 a convention of 169 members met at Albany to revise the constitution of New York state. It met from April 6 to September 10, or somewhat longer than the constitutional convention of 1787. Mr. Elihu Root, perhaps the ablest statesman in the country, served as presiding officer and took a leading part in the debates. The tremendous development of the state since the adoption of the existing constitution (1894) had rendered that instrument unsatisfactory. Serious evils had crept into the government, which the convention sought to remedy by constitutional revision. It may be doubted whether an abler and more painstaking state convention has ever assembled in this country. Thirty-three important amendments were adopted by surprising non-partisan majorities. Twelve were adopted unanimously, twelve by a vote of more than ten to one, and only three by so low a vote as two to one. The constitution thus revised, in the words of Mr. Root, was "fitted by patience, experience, knowledge and effort to the actual conditions of" the people of the state. It was rejected at the polls.

thorities go to Colorado and arrest him and bring him back to Kansas for trial?

7. Did the states have written constitutions before the adoption of the federal Constitution? Were the early state constitutions adopted by the vote of the people? How about recent constitutions in this respect?

8. State the principal parts of a state constitution.

## CHAPTER IX

### THE STATE LEGISLATURES

**96. Structure of State Legislatures.**—In each of the states there is a legislature consisting of two houses. In some states this body is known as the General Assembly, in others as the Legislature, in three as the Legislative Assembly, and in two, New Hampshire and Massachusetts, as the General Court. In all of the states the smaller or upper house is known as the Senate, and in most states the lower house is called the House of Representatives, and in a few states the Assembly, or the House of Delegates, and in one state (New Jersey) the General Assembly. In structure, particulars of organization, procedure, etc., the state legislatures are much like Congress.

**97. Membership and Organization.**—The members of both houses of the state legislatures are elected by popular vote, their qualifications being prescribed by the state constitutions. In more than half the states the senators are elected for a term of four years, or two sessions of the legislature, while members of the lower house are usually elected for two years. There are usually about one-third as many senators as representatives. The total membership of the legislatures ranges from about 50 in Delaware to about 425 in New Hampshire. Members of the legislature are elected from election districts as fixed by the state apportionment acts. Members are paid either by the day or on a salary basis. They enjoy privileges and immunities similar to those enjoyed by members of Congress. The organization of the legislatures is similar to that of Congress. In some states the lieutenant-governor presides over the Senate, but otherwise each house selects its own officers, and makes its own rules, determines the qualifications of its own members, etc.

98. **Sessions of the Legislatures.**—The legislature meets annually in Georgia, Massachusetts, New Jersey, New York, Rhode Island, and South Carolina; every four years in Alabama; and biennially in all the other states. In a number of the states no limit is fixed to the length of the sessions, but in



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A STATE LEGISLATURE IN JOINT SESSION.

most states sessions are limited by the state constitutions to periods ranging from forty to ninety days. Extra sessions may be called by the governor.

99. **The Enactment of Laws.**—Statutes are passed by state legislatures in much the same way as by Congress. As a rule, bills may originate in either house, but in a number of states all bills for raising revenue must originate in the lower house. The state constitutions contain a number of specific directions not found in the federal Constitution. Common examples

are that no law shall relate to more than one subject, which shall be clearly expressed in its title; every bill must be read on three different days in each house; and that bills shall be printed. The usual rule is that a bill in order to become a law must receive a majority of each house, but in some states a majority of members present is sufficient. The names of members voting for or against a bill on its final passage must usually be entered on the journal.

In all the states but Rhode Island and North Carolina, a bill, before becoming a law, must be approved by the governor, who has a veto power similar to that of the President. In the absence of a provision to the contrary, a statute goes into effect immediately upon its passage, but in a number of states it is provided that laws shall go into effect a certain number of days after passage or after the end of the session of the legislature. In some of these states, in case of "emergency," the legislature may provide that the law shall take effect immediately. The foregoing are merely illustrative requirements; the variations and specific provisions in the several constitutions are too numerous to justify any attempt to set them forth more fully.

**100. Drafting Statutes—Legislative Reference Departments.**—It is a hard thing to draft a good statute. One should know not only exactly what he wishes to accomplish by the statute, but also how to word the statute so as to accomplish this. Law and the principles of statutory interpretation are highly technical subjects, and a person not a legal expert who attempts to draft a new law may easily not only fail to accomplish what he was after, but also do unintended harm by reason of his ignorance and inexperience. Before one undertakes to draft a law he should be familiar with the existing condition of the law in his own state, and also with the experience, if any, of other states with legislation similar to that which he has in mind. Unless he is acquainted with the existing laws of his own state, he may, without knowing it, get a law passed similar to or in conflict with one already in force, and thus confuse the law. Also, much statute law is adopted by every state

from other states, and before a legislator should propose the adoption of a statute of a sister state, he ought to inform himself as to how the statute has worked in that state.

Again, the legislator should know something of constitutional law, or he may see his statute declared void by the court on account of some constitutional defect which could easily have been avoided. Further, he ought to understand the principles of English composition, or he may be unable to draft a statute so as to express his meaning. Many statutes have been marred by almost unbelievable grammatical blunders. But notwithstanding the technical difficulties of law-making, the important work of legislation is intrusted to a body of men most of whom lack the knowledge and technical training requisite to enable them to do it well. It is no wonder that much of modern legislation is of poor quality.

To meet this situation many of the states have established legislative reference bureaus or departments to assist the legislature in drafting laws. These agencies collect and keep on file for the use of the legislature, books of statutes, reports of court decisions, newspaper and magazine articles, reference books, government reports, and such other material as may be of interest, and, under the direction of an expert, assist members of the legislature in the actual drafting of proposed laws. By this means the legislature is enabled to decide intelligently whether a law on any given subject is advisable, and, if so, how it should be drawn.

**101. Lobbying.**—A lobbyist is a person, not a member of the legislature, who frequents the lobby or committee-rooms of the legislative hall for the purpose of influencing members of the legislature to vote for or against a particular measure that may come before them. Congress and the state legislatures, and municipal councils, are beset by such persons acting either for themselves, or in the interest of their clients or of some particular cause or project. A lobbyist may act in a purely disinterested capacity, but many lobbyists are professionals, seeking, for a compensation and not always by honest

means, to influence legislation in favor of their clients. Such lobbyists are employed by individuals, corporations, and organizations. Thus at Washington have been found pension lobbyists, tariff lobbyists, public-building lobbyists, suffrage and prohibition lobbyists, railroad lobbyists, and innumerable others. The Anti-Saloon League and the liquor interests kept their paid lobbyists at the meeting-places of the national and state legislatures whenever prohibition legislation was pending.

The opportunity for the lobbyist grows largely out of the fact that all bills introduced are usually referred to a committee, and it is easy for the lobbyist to obtain a hearing, usually secret, before the committee. The activities of the lobbyist extend, however, to the legislators as individuals, and by personal solicitation, social attentions, influence of one kind and another, and even by bribery, the legislator is beset to advocate or oppose particular bills. Sometimes a lobbyist is given the privilege of the floor and allowed to address the legislators as a body. Many of the most successful lobbyists are women. Lobbying is not necessarily an evil, and may work to the public advantage. An honest and patriotic lobby may secure the passage of valuable legislation or prevent legislation against the public interest, and the informed lobbyist may be of great service to the legislature. On the other hand, a lobby may be and often is a menace to the public welfare. Members of the legislature profess to try and usually do try to serve the interests and carry out the wishes of their constituents, but without organization the will of their constituents can be neither developed nor made known. A bill, however meritorious, does not push itself through the legislature. There must be some interested parties behind it either in the legislature or outside. The lobbyist is generally the agent of an organization, which may represent only a small part of the community, and this fact and the secrecy with which lobbying is done, and the questionable practices of many lobbyists, have brought lobbying into reproach.

Statutes have been passed by both Congress and some of the state legislatures to put an end to some of the evils of lobbying. Bribery seems largely to have ceased, either because of the severe penalties prescribed or because of the improvement in public and private morals. In some states lobbyists are required to register and other means are taken to secure publicity. By the constitutions of California and Georgia lobbying by corrupt methods is made a felony.

**102. Constitutional Restrictions Upon State Legislatures.**—The early constitutions contained few restrictions upon the power of the state legislatures. Usually there was a bill of rights in the state constitution and there were several prohibitions in the federal Constitution, but with these exceptions the power of the state legislature was practically unlimited. The early legislatures were given a free hand, and, being made up largely of the best men in the state, they did good work. The present constitutions place many restrictions upon the legislature, the adoption of which expresses a great lack of public confidence in the capacity, wisdom, and honesty of the legislature. These restrictions are as follows:

1. Besides the prohibitions contained in the bill of rights, the legislature is expressly forbidden to pass certain kinds of laws or to do certain things. Among many such restrictions may be mentioned the prohibition of the incorporation of churches, or lending the state's credit, or appropriating money to sectarian institutions, or creating a state debt beyond a certain amount, etc. An important common restriction is the prohibition as to certain subjects of special legislation for the benefit of particular individuals or localities. This prevents not only favoritism and the granting of special privileges but also the obstruction of general legislation by the mass of private and local bills. This is a helpful prohibition, as, indeed, are some of the others.

2. The withdrawal of power from the legislature by incorporating into the constitution itself many provisions of a legislative character relating to important subjects, such as munic-

ipal and private corporations, railroads and transportation, banking, public utilities, labor, education, etc. Such provisions do not properly belong in constitutions, but are now commonly found therein. Constitutional conventions are composed of abler and more experienced men than the legislatures, and work under more favorable conditions, and the people seem to prefer that the more important laws should be made by the convention than by the legislature.

3. The further withdrawal of power from the legislature by the establishment of commissions, such as railroad or corporations commissions to deal with matters which would normally fall within the jurisdiction of the legislature. This is in fact an aid to the legislature, for it relieves it of much administrative work, and thus leaves more time for law-making.

4. The still further withdrawal of power from the legislature in some states by the adoption of the initiative and the referendum by which the people largely take legislative power into their own hands. The popular distrust of the legislature is in nothing more clearly shown than in the resort by the people to direct law-making.

5. The limitation of the length of the sessions of the legislature to periods ranging from forty to ninety days, and the change in some states from annual to biennial sessions. The idea seems to be that the legislature will do less harm if the sessions are shorter and fewer.

6. The detailed regulation of the procedure to be followed in enacting laws. The complexity of the procedure seems to be calculated to discourage legislation.

Thus, as the complexity of modern life has made more legislation necessary and law-making harder than ever before, the state legislature has been steadily shorn of power, and hindrances have been placed in the way of making laws. At the same time the quality of legislators in character and ability has greatly declined. These various limitations are not necessarily all to be condemned. On the contrary, some of them, as already pointed out, are distinctly helpful. But on the whole

they express and in part are responsible for an unsatisfactory condition.

**103. The Inefficiency of the Legislature.**—The legislature is now the least efficient of the three departments of the state government. Possibly the inefficiency of the legislature is exaggerated, but after all allowance is made it cannot be called efficient. This inefficiency is due to four principal causes:

1. The enormous increase of legislation and administrative business due to the development of the country. Hundreds of public and private bills are introduced into the state legislature at every session, and their proper consideration in the short time available is a physical impossibility.

2. The restrictions imposed by the state constitutions upon the sessions and procedure of the legislature. The short and infrequent sessions prescribed in most states do not afford time for the proper consideration of proposed measures, and the complexity of legislative procedure, while largely necessary, prevents the expedition of business. On this subject a former speaker of the Virginia House of Delegates says:/\* “The constitution limits the regular session to sixty days every two years. This is not time enough for even routine business. The speaker of the House of Delegates must be elected, the committees of both houses appointed and organized, and many hearings must be given. The mere operation of the mechanics of legislation, the reading of bills and innumerable roll-calls make heavy demand upon the time and attention of members. There is in fact very little time for reflection, consideration, argument, or study. The biennial budget, which carries upwards of \$14,000,000, could well demand the entire time available to members. It is, therefore, idle to expect the General Assembly to deal intelligently with any unusual and complex proposals for legislation.”

3. The composition and personnel of the legislature itself. Many of the legislatures have too large a membership to be deliberative bodies. The larger the legislature the more democratic it is, but, after a certain limit is reached, the less efficient

\* R. E. Byrd, Report, Virginia Bar Association, 1915, p. 299.

it becomes. The incompetency or unfitness of the members is another reason for legislative inefficiency. In the early days, when the state legislatures ranked in popular esteem almost as high as Congress, the legislature attracted the best, ablest, and most experienced public men in the state. Now the legislatures are composed mainly of young men, willing to serve for a short time for the sake of the experience and the acquaintances formed, or of older men without political experience and usually of only fair ability. A man of ability and position will rarely accept a seat in the legislature unless he has some special end to serve thereby.

4. The decline in legislative responsibility. The popular distrust of the legislature and the taking away of so much of its power must, to a considerable extent, have resulted in a decline in the legislature's sense of responsibility and a corresponding loss in efficiency. The initiative and referendum seem especially calculated to have this effect.

The inefficiency of the legislature has led to many proposals and measures for remedying the evil, such as the establishment of legislative reference departments and the regulation of lobbying. But these do not go to the heart of the matter. The great trouble is in the legislature itself and the conditions under which it works. The true remedy seems to be to restore the legislature to its former position of dignity, power, and effectiveness so that it will again attract the best men to the public service. This can be done by reducing the membership of the legislature to the minimum number consistent with the maintenance of the democratic principle of representation, removing the limitation now existing in most states on the length of legislative sessions, paying the members adequate salaries so that they can devote their time and attention to the public business, and removing the various restrictions that clog legislative action. In short, let the state legislatures be reorganized substantially upon the plan of Congress.

104. **The Powers of the State Legislatures.**—The state legislature has all legislative and other power properly belonging to legislative bodies generally except such as has been

taken from or prohibited to it by the constitution of the state or the federal Constitution. As has been already explained, it is just the reverse with Congress. It has only those powers which have been *granted* to it in the federal Constitution.

While it is not practicable to name all the specific powers of the state legislature, they may be summed up under three heads: the police power, the taxing power, and the power of eminent domain. Of these the great fundamental power is the police power. This term is used somewhat indefinitely. In a narrower sense it means the power of the state to make and enforce laws to preserve and promote the safety, health, morals, and good order of the state. In a broader sense the police power is the whole power of the state to govern the internal affairs of the state, and includes almost every function of civil government. It extends not only to regulations for the public safety, health, morals, and good order, but to those also which promote the public convenience and the general happiness, prosperity, comfort, and well-being of the people. It covers all the power of the state to govern, except the power of taxation and the power of eminent domain, and these powers are mere aids to the police power. The object of the power of taxation is to raise money to enable the state to exercise the police power, and the object of the power of eminent domain is to enable the state to acquire property for the same purpose.

**105. Federal Limitations on State Power.**—The federal Constitution contains several important limitations upon the power of the states. Some of these are in the form of express prohibitions; others grow out of the fact that certain powers are exclusively granted to the federal government. A state can exercise no power which is expressly prohibited nor any power exclusively granted to the United States. The Constitution provides that: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitu-

tion or laws of any state to the contrary notwithstanding." Under this provision no state can exercise any power which would conflict with the federal Constitution or with any valid law or treaty of the United States.

Various express prohibitions are found in Article I, Section 10, of the Constitution, which will be considered in appropriate connections; also in Amendments XIII, XIV, XV, and XIX. The most sweeping prohibition is found in the provision of the Fourteenth Amendment that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### Questions

1. What are the names of the two branches of the legislature in your state, and how many members are there of each branch? For what terms are the members of each branch elected, and how much are they paid? Who are your local representatives?
2. When and how often does the legislature meet in your state and what is the length of the session?
3. What is a legislative reference bureau, and why is it needed? Is there such a bureau in your state?
4. What is lobbying? Ought it to be prohibited?
5. Name three ways in which state constitutions have restricted the powers of state legislatures.
6. Name two reasons for the decline in the efficiency of the legislature. What seems to be the true remedy?
7. State generally what legislative power the state legislature has. Which has the greater extent of power, Congress or the state legislature?
8. What is the police power? What two other powers has the state? Are the powers of the state restricted by the federal Constitution?

## CHAPTER X

### THE STATE EXECUTIVE DEPARTMENTS

**106. The Governor.**—The chief executive officer of a state is the governor, who in all of the states is elected by the people. The term of office of the governor varies, being one year in Massachusetts, three years in New Jersey, two years in twenty-four states, and four years in twenty-two states. In a number of states the office may not be held by the same person for two successive terms. The salary of the governor is in some states fixed by the state constitution, but in most states this matter is wisely left to the legislature. Like the President, the governor may be removed from office by impeachment.

The governor has little control over the other executive and administrative officers of the state. The more important of these are, like himself, elected by the people and are responsible not to him but to the people, who have little or no means of knowing whether they are efficient or not. There is nothing in the state government to correspond with the President's cabinet. The governor has no such staff of personal advisers. The conviction is growing that the economy and efficiency of the state governments would be greatly promoted by concentrating authority and responsibility more largely in the hands of the governor.

**107. Powers and Duties of the Governor.**—The powers and duties of the governor as defined in the early state constitutions were very limited. During colonial times the royal governors were frequently despotic in their administrations and the colonists found in their own legislatures their best protection against executive oppression. Taught by experience to distrust the executive and to regard the legislature as the chief safeguard of their liberties, when they came to establish their

own governments they naturally gave little power to their governors and placed few limitations upon the powers of their legislatures. The governor was scarcely more than a figure-head, while the legislatures had almost unlimited power. Gradually this condition has been reversed. There has grown up a profound distrust of the legislature and it has been shorn of much of its power, while the power of the governor has been largely, though perhaps not correspondingly, increased. Even now, however, the power of a state governor is not great, though it is still on the increase.

It is the duty of the governor to take care that the laws of the state be faithfully executed; he exercises a limited legislative power in his messages, reports, and recommendations to the legislature, and in his veto; he may summon the legislature in special session or adjourn it in case of disagreement; he has a limited power of appointment (but not usually the power of removal); he represents the state in its dealings with other states, and to some extent with the federal government; he has the pardoning power, which he exercises either alone or in connection with the state senate or legislature, or a board, or council; he has various administrative powers; and he is commander-in-chief of the state's military and naval forces.

#### 108. **Miscellaneous Executive and Administrative Officers.**

—Besides the governor there are numerous other state officers provided for by the state constitutions or statutes. In all of the states there is a secretary of state and a treasurer. In most of the states there is also a lieutenant-governor, who succeeds to the office of governor upon the death, removal, or disability of the governor. In states without lieutenant-governors the president of the senate, or the speaker of the house, or the secretary of state usually succeeds to the governorship. Other common important state officers are the attorney-general, auditor, comptroller, superintendent of public instruction, librarian, and various commissioners, such as commissioners of insurance, agriculture, immigration, labor, and statistics, charities, etc. The more important officers are usually elected by

the people; others are appointed by the governor, or by the governor and the senate, or as provided by the legislature. There is much variation in the states as to what offices are provided for and how they are filled.

**109. State Boards and Commissions.**—The great increase in the activities of state governments in recent years in the regulation of the affairs of the people has led to the multiplication of state administrative boards and commissions. The members of some of these are elected by the people while others are appointed by the governor or otherwise. Of some of them the governor is *ex officio* a member. Among these agencies may be mentioned, the state corporation or railroad commission; board of public works; board of public health; board of prison commissioners; board of education; tax commission; board of charities; highway commission; board of law examiners for admission to the bar; besides many others.

With reference to this subject a recent writer says: "The bewildering list of commissions, boards, and departments which we find in every important state is simply appalling when we take into account the necessity, in public administration, of providing for efficient work and of fixing definite responsibility. These boards and officers are frequently lobbying against one another in the legislature for appropriations and an increase of powers. Some of them are elected by popular vote; and others are appointed by the governor, with or without the approval of some branch of the legislature. Their terms vary so that the appointing power never has an opportunity to make a clean sweep and introduce more efficient administrative methods. Some of these subordinate authorities may be removed by the governor alone and others by the governor and Senate, and still others by the very difficult process of impeachment. Any one who has followed the somewhat uninteresting history of state administration during the last quarter of a century is well aware of the wastefulness and inefficiency resulting from this disintegrated and irresponsible system."

\* Beard, "American Government and Politics," p. 503.

The evils of this system are being recognized and to some extent corrected. The remedy is simplification of the government by reducing the number of elective officers and of boards or departments, thus concentrating power and responsibility.

### Questions

1. Who is governor of your state and to what political party does he belong? What is his term of office? His salary? What other state officers are elected by the people?
2. Name any two of the administrative boards or departments of your state government.

## CHAPTER XI

### THE STATE COURTS

110. **The State Judicial Systems.**—Each state has its own system of courts, which are usually provided for by the state constitution, but sometimes by the legislature. The judicial systems of the several states are substantially the same, there being, however, variations in the number and names of the courts, the apportionment of jurisdiction, and other details. There are two general classes of courts, namely, *trial* courts and *appellate* courts. A case is begun, tried, and decided in the first instance in a trial court. Sometimes this decision is final, but usually in the more important cases an appeal is allowed to a higher court in which the decision of the lower court is reviewed. If found correct the decision of the trial court is affirmed, but if erroneous it is reversed, and an opposite judgment is rendered, or the case is sent back to the lower court to be tried again according to the directions of the appellate court.

A court may be both a trial court, with original jurisdiction of causes brought in it for trial, and an appellate court, with jurisdiction to review the decisions of inferior courts. All of the appellate courts of highest rank have some original jurisdiction. Since the courts are established and their jurisdiction defined by the law, and the laws of the several states differ in many particulars, it is impossible in a brief statement to present more than a general idea of the state courts.

In most of the states judges are elected by the people; in other states they are elected by the legislature, or appointed by the governor, or by the governor and council, senate, or legislature. In Massachusetts, New Hampshire, and Rhode

Island the judges hold office for life; in other states the term of office ranges from two years in Vermont to twenty-one years in Pennsylvania. Judges are usually not highly paid, but the judges of several of the lower courts of New York state receive salaries higher than those of the justices of the Supreme Court of the United States.

111. **Trial Courts.**—The lowest trial courts are the courts of the justices of the peace or magistrates' courts. These have jurisdiction of, that is, the power to hear and decide, minor cases, both civil and criminal. Their decisions usually serve to dispose of the cases brought before them, except where an appeal is taken to a higher court, but they are of no authority as determining questions of law. The principal trial courts are the county courts, or district courts, or circuit courts, as the case may be, which have jurisdiction of all civil cases involving substantial amounts, or real estate or other property of value, and criminal cases prosecuted by information or indictment. Appeals from the decisions of justice's courts may be taken to these courts in the more important cases. The trial courts may be courts of general jurisdiction, or they may be courts of special jurisdiction with authority to try only certain classes of cases. For example, there may be courts of probate and administration, dealing with matters relating to wills and the settlement of estates.

A trial court is usually held by a single judge. Whether a jury is used depends upon the nature of the case. Juries are employed in most civil cases and in all criminal cases, except in the magistrates' courts. The party who brings the suit is called the *plaintiff*, and the party against whom the suit is brought is the *defendant*. In criminal cases the suit is brought in the name of the state, or of the people of the state. The procedure in trials is regulated by statute and rules of court. When a suit is brought, due notice must be given to the other party; the plaintiff briefly states his case and the defendant his defense in writing, these writings being known as the *pleadings*. Upon the trial, both sides present their evi-

dence, under the direction of their respective lawyers, who actually conduct the case. When the evidence is all given, the respective counsel argue the case before the jury (or the court where no jury is used), and the court usually instructs the jury as to the law of the case and their own duty, whereupon the jury retire and consider their verdict. If they agree upon a verdict, the trial is ended, but if they "hang," or cannot agree, they are discharged and a new jury must be empanelled and the case tried over.

**112. Appellate Courts.**—In some states there is one appellate court for the entire state, to which all appeals from the regular trial courts are taken. This court is variously called the Supreme Court, the Court of Appeals, or the Supreme Court of Appeals. In a number of states there is also a lower or intermediate appellate court, also variously called. Thus, there may be the trial courts, then an inferior court of appeals, and above this the Supreme Court of Appeals. The usual course of appeals will be from the trial court to the inferior appellate court, and from this to the highest appellate court, the more important cases, however, being taken directly from the trial court to the highest court. This corresponds to the federal system, consisting of the District Courts, the Circuit Courts of Appeals, and the Supreme Court.

In an appellate court there are usually three or more judges, an odd number being selected so as to avoid an even division in case of difference of opinion. A majority vote determines the decision. Should one of the judges be absent, so as to make the number of judges even, and they are evenly divided in opinion as to whether the judgment of the lower court should be affirmed or reversed, the rule is to affirm the judgment. In an appellate court the case is decided by the court without a jury.

**113. The Law Administered by the Courts.**—The law is the body of principles and rules established and enforced by the state for the regulation of the conduct and affairs of the people. The American system of law, like most of our institu-

tions, is of English origin. The colonists brought over from England so much of the English law as was useful in this country, just as they brought over the English language, the English mode of dress, and other institutions and customs of the mother country. In this country the law has developed along independent lines to meet the new conditions found here and the changes that are always taking place in human society.

There are two main divisions of the law: (1) the *written law*, and (2) the *unwritten law*, otherwise known as the *common law*. The written law is that part of the law which is expressly and formally adopted, enacted, ordained, or prescribed by the law-making authorities of the state. In this country it includes: (1) the Constitution of the United States; (2) acts of Congress; (3) treaties; (4) the constitution of the state; (5) acts of the state legislature; (6) municipal ordinances; (7) written executive and administrative orders and regulations of the President, governor, or other executive officers, so far as they have the force of law, and rules of courts governing judicial proceedings.

The common law is judge-made law. Its principal source is the customs of the people which have become so generally accepted and approved that they are looked upon as being of binding force, so that one shall not be permitted to disregard them. Such customs are common and come up in any department of life. Thus in this country there is a rule or custom of the road that when travellers meet they shall avoid a collision by each one turning to his right. If one of them should fail to do so and run into and injure the other, a court would no doubt hold that his failure to follow the established custom made him liable to the injured party and he must pay for the injury. By so giving his official approval or sanction to the custom, the judge, as the official spokesman of the state, makes it a rule of law.

So whenever a case is brought before a judge for decision, and there is no written law or previously established rule of the common law by which the case may be decided, the judge

decides it according to his best judgment as to what the established customs or opinions of the people require in such a case. In this way new rules of law are made, and usually they will be followed in later cases involving similar questions. It is not primarily the function of the judge to make law—this is the business of the legislature; but in the discharge of his proper function to settle disputes or controversies between individuals, the judge necessarily makes the law when there is no existing law covering the case. In this manner the common law of England and of this country has been built up.

An important branch of the law is known as *equity*, or chancery jurisprudence, because it was formerly administered by a special court known as a court of equity, or chancery, the two words meaning the same. The head of the court of chancery in England was the lord chancellor. In this country equity jurisprudence is usually administered by the regular courts, but in a few states separate chancery courts are still maintained. Among the subjects belonging to equity are trusts, mortgages, the administration of estates, the adjustment of the claims of creditors, the settlement of accounts, receiverships, etc. Important equitable remedies are injunctions, the specific performance of contracts (by which one is made to perform his contract instead of merely paying damages for breach), the reformation of written instruments when incorrectly written, the re-execution of written instruments which have been lost or destroyed, and the cancellation of written instruments.

### Questions

1. Name the different courts in your state. How are the judges of the highest state court chosen?
2. What is the difference between a trial court and an appellate court?
3. What are the several varieties of written law? What is the common law, and who "makes" it?

### **III.—LOCAL GOVERNMENT**

#### **CHAPTER XII**

##### **LOCAL GOVERNMENT IN GENERAL**

**114. In General.**—As a natural result of the difference in the times and conditions under which different portions of this country were settled, there are marked differences in the character and form of local governmental institutions throughout the United States. A complete and detailed description of local government would necessarily be that of some particular state and would not be correct as applied to other states. Only a general description of local government in the United States can properly be attempted in a work of this scope. But, notwithstanding many differences in details, there is a general similarity in local government throughout the country.

All the states are divided into counties, the size and boundaries of which have been determined by local conditions. The county is the standard geographical subdivision of the state. For judicial and political purposes (that is, the holding of court and the election of members of Congress and of the state senate) counties are usually grouped into circuits or districts. For the administration of local affairs counties are usually subdivided into smaller areas variously known as towns, townships, precincts, districts, etc. Each of these subdivisions is for some purposes a governmental unit. Towns and cities are usually incorporated and empowered to govern themselves independently of the counties or other rural units in which they are situated. In all the states the inhabitants of the local political units of area have large powers of self-government. They elect their own officers and representatives in the state legislature and largely administer their own local affairs.

All the various divisions and subdivisions of the state are created\* by and subject to the control of the state at large. Subject to general provisions on the subject in the state constitution, they are under the absolute control of the state legislature, which may create or abolish them at discretion and prescribe or change the particulars of their organization and powers. The legislature is the law-making body for the entire state, and, except in so far as local or special legislation is forbidden by the state constitution, it may regulate the local affairs of particular communities as well as pass general laws for the state at large. The extent to which the state legislature should administer local government is necessarily dependent upon circumstances and the subject-matter to be regulated.

In certain fields state supervision and control is on the increase, some matters once regarded as of purely local concern have become of state-wide and even of national importance. So we find that the public roads, the public health, public education, taxation, and other subjects of general interest, have been largely taken over by the state, the local authorities acting as administrative agents under the direction of the state boards and officials. Opposed to this, especially in the large cities, there is what may be considered a counter-movement to increase the degree of local self-government or "home rule." In local government, as in state government at large, the present period is one of transition or evolution.†

**115. Types of Local Government.**—The authority of the state government extends over the entire state, but for the purpose of administration and in order to provide for peculiarities of local needs and conditions, local governmental units or divisions of the state are established. As stated in the preceding section, the forms of local government differ considerably in

\* This, of course, is not true of the early colonial settlements. The New England towns, for example, existed before the general government of the state.

† As to local government, see Beard, "American Government and Politics," chap. XXIX, and Munro, "Government of the United States," chaps. XXXVII-XLIII.

the several states. There are three principal types of local government in the United States: (1) "town" government, as found in the New England states; (2) county government, found especially in Virginia and the South and the far West; (3) a mixed form of government, found in the middle Atlantic states, especially New York and Pennsylvania. These are the types of local government for rural communities. Municipal government constitutes a fourth type for urban communities.

As already explained, all the states are divided into counties and the counties are subdivided into townships, districts, etc. The three types of rural government differ in the relative importance of the county and its subdivisions. Thus in New England the "town" is the important unit, the county government being feeble and undeveloped. In Virginia the principal unit is the county, the subdivisions (districts) being of small importance. In the states in which the mixed system prevails the respective functions of county and township or district are more nearly balanced in importance, but in varying degrees in the different states.

**116. Town Government in New England.**—In New England the colonists settled in compact communities. They came to America usually in congregations under the leadership of their ministers and established in their little settlements a church-state on a small scale. The "meeting-house" of the congregation was the centre of the religious, political, and social life of the community. Around this the people lived. Moreover, the conditions of the country were not favorable to the establishment of large plantations as in the South. The winters were long and severe, the soil was unproductive, and the Indians were hostile. For companionship, mutual help, and safety the settlers kept close together. These conditions, co-operating with the independent character of the people themselves, led to the establishment of a purely democratic form of government. Every adult male was a voter, and the government was vested in an assembly of the voters held at intervals in the meeting-house or the town hall. At these town

meetings the public affairs of the community were publicly discussed and attended to, every qualified voter having the right to take part in the meeting. In the words of Lord Bryce: "The town meeting was for New England the most perfect school of self-government in any modern country."

The town meeting is still kept up in New England and exists now in about the same form as in early times. There is usually an annual meeting and called meetings at such times as may be necessary. At each meeting a moderator is chosen to preside, and at the annual meeting the town officers for the year are elected. These are the selectmen, the town clerk, assessor, treasurer, constables, and various minor officials, such as poor guardians, pound-keepers, school committees, library or cemetery trustees, and the like. Committees are also appointed for special duties. The selectmen are the chief administrative officers of the town and conduct its affairs during the intervals between the annual meetings. Their number ranges from three to nine.

The New England "town," is not a town in the ordinary sense, that is, it is not necessarily an urban community. It is in fact usually a rural community containing one or more villages. The area of a town may range from about five to thirty or forty square miles, and its population from less than 200 to over 30,000. The more populous places are now usually incorporated, but this is not always the case. Thus in Massachusetts, Plymouth with 13,000 and Brookline with about 35,000 inhabitants, still retain their town form of government. The town form exists in the six New England states. In the older of these states the town governments are older than that of the state, the states being in fact an aggregation of towns. This is the reverse of the rule in other states, in which the units of local government are historically subdivisions of the state.

**117. County Government in Virginia.**—In the southern colonies conditions were very different from those in New England, and consequently a different type of local government was developed. In Virginia, the leading colony, there were few

towns and the people lived mostly on large plantations, for which the soil and climate were favorable. The peaceable character of the Indians made the concentration of the colonists for purposes of defense unnecessary. The colonists were not homogeneous, as in New England. They came over as individuals or single families, and not in congregations or groups. Socially they were divided into classes ranging from the aristocratic planters to the slaves. On the large estates the leading planters grew wealthy and established an aristocratic society of the English type.

Meetings of all the people were impracticable under such conditions, and a representative, or rather an aristocratic, form of government was established. Following the English model, the county was set up as the political unit. The counties were divided into parishes, as in England. Parish affairs were administered by a vestry of twelve men, who at first were chosen by the people of the parish, but later they became a self-perpetuating close corporation independent of the people. Ultimately, however, the parish became a purely ecclesiastical division, and the county was the sole political unit of local government. County affairs were administered by justices of the peace, usually eight in number, who formed the county court. The justices were appointed by the governor, usually, however, from nominations made by themselves, so that the county court, like the vestry, became practically self-perpetuating. Upon the establishment of the state government in 1776, the county system was retained, the officials still being appointed, the people voting only for members of the legislature, and only property-owners being allowed to vote.

The Virginia system prevailed in all the Southern colonies, and is still retained, except, of course, that the governing officials of the county are elected by the people. The county system exists also in the states of the far West.

**118. The County-Township System.**—The mixed or county-township system of government exists in practically all of the states outside of New England, the South, and the far West,

though great differences are found in the relative strength of the county and township governments. In a few of the states, a diluted form of town government exists, town or township meetings being held, but their functions are usually limited to the election of officers. Nowhere outside of New England does town government exist as found there. The term "town" in the New England sense is little used outside of that section, "township" being the common term. The term "township" as a unit of local government should not be confused with the same term denoting the unit of the federal survey in the Western states. This unit, which is an area six miles square divided into thirty-six sections of one square mile, has no political significance in itself, though in some states the political township and the rectangular congressional township may coincide.

### Questions

1. What are the three principal systems of local government in this country? What system is adopted in your state?
2. What is a New England "town," and why was this system of government adopted there?
3. What system was adopted in Virginia, and why was a different system adopted there from that of New England?

## CHAPTER XIII

### COUNTY GOVERNMENT

**119. In General.**—All the states are divided into counties,\* the number of counties in a state ranging from three in Delaware to one hundred or more in the larger states. The counties vary greatly in size and population. The county is the prevailing unit of government in the United States, though it may itself be cut up for certain administrative purposes into smaller divisions, such as townships or districts. A county is a political or civil division of the state, created by the sovereign power of the state for judicial and other governmental purposes. It is classified in law as a public quasi-corporation, being in a sense a corporation, yet not vested with full corporate rights and powers.

Unlike a municipal corporation, that is, an incorporated town or city, a county has no charter, and also it is an involuntary organization created by the state usually without the solicitation, consent, or concurrent action of the people of the county. A municipal corporation is created mainly in the interest and for the convenience of the people of the particular locality, but a county is organized distinctly as an agency of the state. Its function is to administer the state laws and such local regulations as it may be empowered to make. All its power comes from the state. Except as restrained by the state constitution, the legislature has full power over counties and may create or abolish them at pleasure. To enable them to discharge their functions counties are given power to sue and be sued, make contracts, hold property, levy taxes, borrow money, and exercise such other powers as may be conferred upon them by the state constitution or by the legislature.

The county serves as a unit for political, administrative, and judicial purposes. Politically it is the unit upon which rep-

\* In Louisiana the divisions are called parishes.

resentation in the state legislature is largely based, members of the lower house, and sometimes of the Senate also being elected by and representing the people of the several counties. It is also a unit for local-option purposes, police regulations of various kinds, such as dog laws, and formerly liquor laws, being sometimes made operative only in such counties as have voted to adopt them. As an administrative unit the county is given authority over taxation, public roads and bridges, poor relief, public schools, etc., the functions of counties varying considerably in the several states. The present tendency is toward a larger control of the public roads and schools by the state authorities. As a judicial district or unit the county is given jurisdiction of the administration of the civil and criminal laws of the state, also of the registration or recording of deeds and the probate of wills. The county court-house, recording office, and jail are located at the county-seat, which is usually, though not always, the most important town in the county.

120. **County Boards.**—The governing body of a county is the county board, members of which are usually called commissioners or supervisors. These are usually elected by the voters of the county, being chosen either from the county at large or from and by townships or districts, as the state law may provide. In the board are vested all the powers of the county except in respect to matters which have been exclusively committed to some officer or person. Their powers include, in general, such matters as the levying of county taxes and making appropriations; the construction and maintenance of public buildings and roads and bridges; the making of county contracts; the borrowing of money and issuing of bonds for county purposes, when so authorized by law; the care of the poor; the conduct of state elections; and, when so authorized, the adoption of various local police regulations, such as health and quarantine regulations, regulations for the protection of fish and game, and the like.

121. **County Officers.**—County officers are not the same in all the states, there being considerable variation in this re-

spect. In New England, where county government is only slightly developed, some of the most common officers are not found. Most county officers are elected by the voters of the county, usually for terms of two or four years. The following are the most important county officers:

*Sheriff.*—The chief executive officer of a county is the sheriff. The office of sheriff is one of great antiquity in England. The name is a compound of the old Saxon terms *shire* (county) and *reeve* (officer). Sheriffs are usually elected by the voters of the county for a term of years. As a rule the sheriff is paid in fees, his compensation ranging from a small amount in most country districts to many thousand dollars in populous counties containing large cities. The sheriff is the conservator of the peace for the county. It is his duty to arrest and commit to prison persons charged with crime or breaking the peace. In the performance of this and his other duties, he may be assisted by deputies appointed by him. In preserving the peace he has the right, if necessary, to summon a *posse comitatus* (the power of the county) to assist him. Every able-bodied male citizen over fifteen years of age is bound to answer his summons for this purpose. In modern times, however, the occasion for such a summons rarely arises. The sheriff is usually the keeper of the county jail, and has custody of the prisoners confined therein. He is also an officer of the court, and looks after the jurors and witnesses, serves summons, and carries out the orders of the court. He may have various other duties prescribed by law. Justices of the peace also act as conservators of the peace, and one or more constables may be elected or appointed in the various districts of the county to act in the same capacity.

*Coroner.*—The office of coroner, like that of the sheriff, is a very ancient one. There are usually two or more coroners in each county. The principal duty of the coroner is to hold an inquest or inquiry as to the cause of any death occurring under circumstances exciting suspicion of violence or crime. When a dead body has been found under such circumstances, the coroner summons a jury of citizens, usually six in number, who

examine into the circumstances and render a verdict as to the probable cause of death. If the jury find that the deceased came to his death by the criminal act of any person, the coroner may cause the arrest of the person accused. He is then subject to indictment or information and trial by the regular authorities, the coroner's jury having no jurisdiction to try the accused.

*County Attorney.*—The attorney at law for the county is known by various designations, such as, prosecuting attorney, state's attorney, commonwealth's attorney, district attorney, etc. Usually he is elected by the people of the county for a term of years. His principal duty is to conduct criminal prosecutions in the county. He assists the grand jury in their deliberations, and if an indictment is found, he conducts the prosecution before the trial jury. In some states, he is empowered to institute prosecutions by information presented by himself without the intervention of a grand jury. He also acts as legal adviser to the county board and other county officers, and represents the county in civil actions.

*County Clerk or Recorder.*—In about half the states there is a county clerk, who may be also clerk of the county court. He has charge of the county records in which are recorded deeds, mortgages, and other documents authorized or required to be recorded. Other duties of the clerk are to prepare the election ballots, to issue marriage licenses, and to record births, marriages, and deaths in the county. In a number of states the county records of deeds, mortgages, etc., are in charge of a special officer known as the recorder or register of deeds.

*Financial Officers.*—In practically all the states there is a county treasurer, whose function it is to collect and take care of the state and county taxes. In some states there are also tax collectors. Other financial officers in some states are county tax assessors, who appraise property for taxation; and county auditors, who audit the accounts of all county officers and issue warrants on the treasurer for claims against the county.

*School Officers.*—In most states the rural public schools are established and conducted by the county school authorities.

In each county there are a school superintendent and a school board. The superintendent is variously chosen, either by election by the people, or by the county school board, or by the state authorities. He conducts teachers' examinations, visits the schools, and has general oversight of the schools of the county. The county school authorities act under the general direction of the state authorities.

**122. County Courts.**—The county court is one of the most important of state institutions. Each county has its own court, which is a part of the state judicial system. Some of the more populous counties have their own judges, but usually there is not a separate judge for each county, but several counties are grouped into a judicial district with a single judge who goes from county to county holding court at regular intervals in the different counties. As a rule the judges are elected by the voters of the county or district, but sometimes they are elected by the legislature or appointed by the governor and senate.

The county courts have appellate jurisdiction over the courts held by justices or magistrates, and have general original civil and criminal jurisdiction. They constitute the principal trial courts in the state judicial system. Where the same judge holds court in more than one county, the court is usually known as the circuit or district court. The probating of wills and the administration of estates usually comes within the jurisdiction of the county courts, but in some states there are special probate courts. Besides the county courts, there are inferior courts held by justices of the peace or similar inferior magistrates. Justices are elected in the several districts of the county. Justices' courts have jurisdiction of petty civil and criminal causes.

### Questions

1. How many counties are there in your state? Name the subdivisions of your county.
2. What is the governing body of your county called? How many members has it and how are they chosen?
3. Give the names of the principal officers of your county.
4. What is the principal court in your county called? Name the judge.

## CHAPTER XIV

### MUNICIPAL GOVERNMENT

**123. In General.**—Whenever a sufficient number of people are congregated together to justify or make necessary such a step, they may incorporate themselves, under the authority of the state, into a distinct political community with power of self-government in local affairs. When so incorporated they constitute a municipal corporation, which may be defined to be a body politic formed by the incorporation of the inhabitants of a designated area for purposes of local government. Each state prescribes for itself the conditions upon which communities may become so incorporated, including the number of inhabitants necessary to form such a corporation.

In the absence of contrary provisions in the state constitution, the creation of a municipal corporation is a matter within the discretion of the state legislature, regardless of the wishes of the inhabitants of the community affected. Usually, however, municipal charters are granted in response to an application therefor from the people themselves. A municipal corporation is an arm or branch of the state government for the administration of the laws of the state within the boundaries of the municipality, and also a local agency for providing for the necessities, comfort, safety, and convenience of its own people. According to its size, a municipal corporation may be a village, town, or city, and cities may be classified as cities of the first, second, third, etc., class, according to population.

No feature of American life has been more striking in the past few decades than the growth of cities and towns. In 1790 there were in the United States only five cities with more than 8,000 inhabitants, and the population of the largest city, Philadelphia, was only about 45,000. One hundred years ago (1820)

the number of such cities had risen to thirteen, fifty years ago there were 226, and in 1920 the number was about 900. In 1820 only two cities, Philadelphia and New York, had a population exceeding 100,000, while in 1920 there were sixty-nine such cities. In 1820 the ratio of persons living in cities of over 8,000 inhabitants was 4.9 per cent, or about one-twentieth of the total population; in 1870 the ratio was 20.9 per cent, or one-fifth; in 1920 more than one-half of the total population of the United States lived in cities of 8,000 or more. In 1920 the population of New York City alone far exceeded that of the entire United States in 1790.

This astonishing growth of urban population has been due to a number of causes. The rise of the modern industrial and commercial system is, perhaps, the principal cause. Factories and industrial plants employing large numbers of persons are usually established in cities, and themselves draw people together. Trade and commerce likewise can exist only where many persons are congregated. Wherever industry and trade flourish the people will flock, and people make cities. Further, the great flood of immigrants that has poured into this country since the Civil War has mainly settled in the cities. Again, the superior attractions of city life—better educational and religious advantages, more comfortable living conditions for those who can afford them, amusements, and the general fascination of the city, have drawn thousands from the country. Improved methods of agriculture, for example, the use of farm machinery, have made possible the proper cultivation of the land with fewer workmen, and thus many have been released from farm labor to find employment in the cities.

This congestion of population in cities has made the problem of city government a most important one, while the peculiar conditions of city life make it also a very difficult one. It is not strange that the government of American cities has not been very successful. Lord Bryce in his book on the American Commonwealth, first published in 1889, wrote: "There is no denying that the government of cities is the one conspicuous

failure of the United States. The deficiencies of the national government tell but little for evil on the welfare of the people. The faults of the state governments are insignificant compared with the extravagance, corruption, and mismanagement which mark the administration of most of the great cities." In the revision of this work published in 1910 this statement is retained, but it is added that "Yet no one who studies the municipal history of the last decades will doubt that things are better than they were twenty-five years ago." There has indeed been great improvement in the government of American cities, and no branch of government is now receiving more intelligent and earnest consideration than municipal government.

**124. Municipal Charters.**—The basis of the government of a municipal corporation is its charter, which is granted by the state. It corresponds in a general way to the federal Constitution for the country at large. It sets forth the scheme of government for the town or city, and grants and defines its powers. In some respects a municipal corporation resembles a private corporation, for example, in its power to sue and be sued, hold property, or make contracts; but, unlike the charter of a private corporation, a charter granted by the legislature to a municipality is not a contract, and may be repealed at pleasure by the legislature, notwithstanding the clause in the Constitution prohibiting the impairment of contracts. The legislature may create or abolish municipal corporations in its discretion.

This complete control of municipal corporations by the legislature is sometimes objectionable in that it places the interests of the municipality largely at the mercy of the legislature, which has occasionally abused its power. Undoubtedly, it is hardly natural or reasonable that a legislature composed largely of members from the rural districts should control the affairs of a large city with its own peculiar needs. To correct this, in a number of states the "home-rule charter system" has been adopted. The cities are permitted to frame their own charters, which are usually drawn by a board or commission, and then

submitted to the people of the city for approval at the polls.

**125. Forms of Municipal Government.**—The older and still the more common form of municipal government in the United States is the mayor and council type. The powers and functions of the corporation are vested in or devolve upon a mayor and various administrative boards or officials and a council. In general this plan is similar to that of the state and federal governments. This type of municipal government was practically universal in this country until about the beginning of the twentieth century, and is still the prevailing type. In recent years two new forms of city government have been rapidly coming into vogue. These are the commission form of government and the city manager plan. These three forms will now be briefly described.

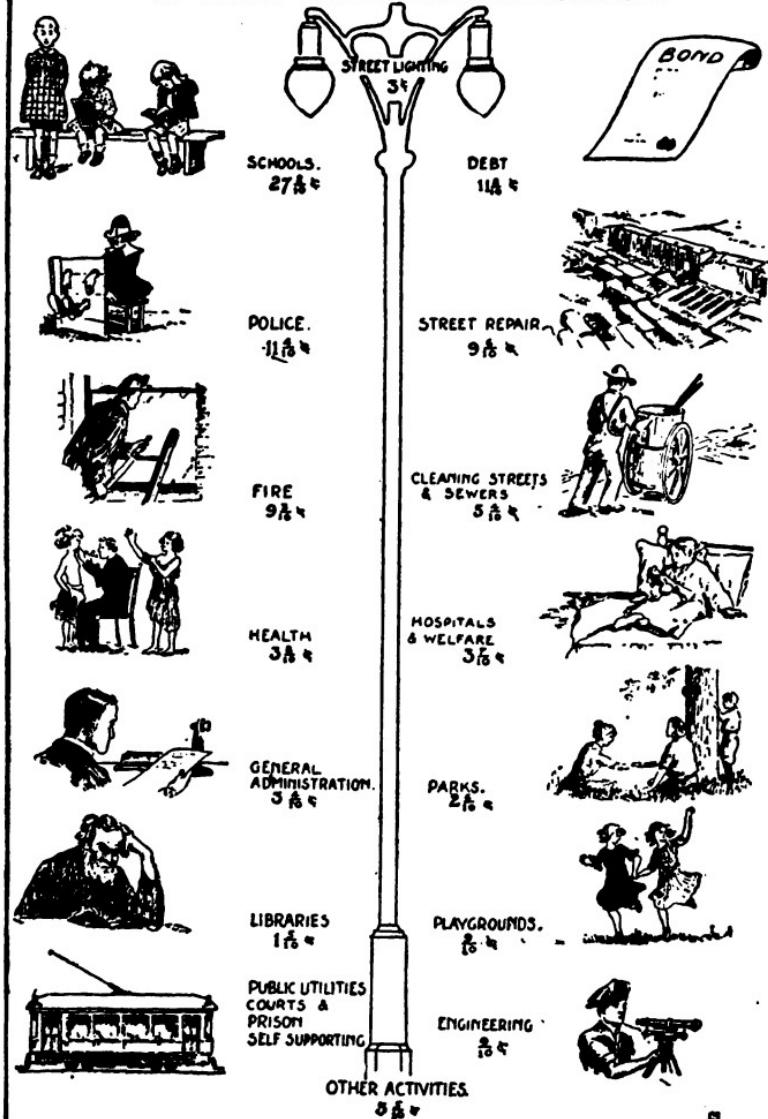
**126. The City Council.**—Every municipality has some kind of legislative body, usually the town or city council. Formerly the prevailing rule for the larger cities was a council composed of two branches (bicameral), the upper chamber being usually known as the board of aldermen and the lower chamber as the common council. The bicameral form of council has, however, been largely abandoned, and many of the larger cities, as well as the towns, now have councils composed of only one house. The reason for the bicameral form is not so strong in the case of a municipal council as in that of a state legislature because of the difference in the nature of the functions of the two bodies. The importance of the bicameral form for a *legislative* body has already been pointed out, the principal reason being that it affords a check against hasty and ill-advised legislation, but the same considerations do not apply in the case of an *administrative* body, which a municipal council largely is, its legislative powers being quite limited. Councilmen are elected for terms varying from one to four years, being chosen either by wards, or from the municipality at large, or by some combination of the two methods. They usually serve without pay, but are sometimes paid in the larger cities.

The principal functions of the municipal council are as follows: (1) As a legislative body they pass local laws or ordinances. These relate to a great variety of subjects, such as the preservation of peace and good order, the suppression of vice and intoxication, traffic and the use of the streets, sanitation, vagrancy, amusements, health, obnoxious business, markets, etc. These ordinances, so far as valid, have the force of statutes. They must not conflict with the constitution or statutes of the state, must be within the power of the corporation to enact, and must be reasonable. (2) The council has considerable power in matters of local finance in connection with the levying of taxes, making appropriations, borrowing money, etc. This power, however, is largely restricted by state constitutional or statutory provisions regulating its exercise. (3) Formerly municipal councils had large power in granting franchises for the construction and maintenance of public utilities, such as water-works, and lighting, telephone, and street railway systems, and this power it still to a considerable extent retained. It was found, however, that the power to grant franchises was often abused or exercised corruptly, valuable franchises being granted for long terms or in perpetuity with little or no compensation to the city. This power has, therefore, been largely restricted by state laws safeguarding the interests of the public. (4) The council also exercises various other miscellaneous powers, such as making city contracts, laying out new streets, etc.

**127. The Mayor and Other Administrative Officers.**—The mayor is the chief executive of the city, his position corresponding closely to that of the governor of the state. He is elected by popular vote and holds office for a term varying from one to four years. He is paid a salary, which in the case of the largest cities sometimes exceeds that of the governor of the state. As in the case of the governor, the mayor's duties are legislative, administrative, and financial. He may recommend legislative measures to the council and usually ordinances must be submitted to him for approval or veto. He has the power

# YOUR TAX DOLLAR

IS SPENT FOR THE FOLLOWING SERVICES



*Courtesy of the American City Magazine.*

GRAPHIC PRESENTATION OF A CITY BUDGET.

of appointing various municipal officers, and the present tendency is to increase his power in this respect. Most of the more important officials, however, such as the treasurer, city attorney, police commissioner, heads of the fire department, department of streets, etc., are still elected by the people or appointed by the council. As the public is in no position to judge of the fitness of candidates for such positions, their selection by popular election has been found unsatisfactory in the larger places, and this method of choice is being abandoned. In connection with the administration of the city government there are many duties of one sort and another requiring the mayor's attention.

Besides the mayor, there are various boards or commissioners at the head of the several administrative departments of the city government, such as the departments of public health, public works (streets, sidewalks, sewers, water-works, etc.), public safety (fire, police, building inspection, etc.), finance, parks, education, etc. There are also a large number of employees of various kinds, both skilled and unskilled, such as firemen, policemen, clerks, school-teachers, library officials, street-cleaners, and others. To a considerable extent the merit system has been adopted in the selection of certain classes of city employees, these being brought under civil service regulations.

**128. The Commission Form of City Government.**—The government of a city is a very different matter from the government of a state, and it does not necessarily follow that a form of government that works well for a state will serve equally well for a city. Only to a very limited extent does a city government have to make general laws—these are made by the state legislature for the entire state, including the cities; the principal work of a city government is administrative. A city is for most purposes a great business organization, its administration involving the performance of a multitude of operations, often of a technical nature, and calling for the expenditure of great amounts of money.

For this kind of work the form of municipal government

just described, patterned after that of the state, has often proved unsuited, and in many cases the government of the larger American cities has been characterized by waste, incompetence, negligence, and corruption. This has led during the past twenty years to the reconstruction of the governments of several hundred of the principal American cities. In place of the complicated mayor and council form of government, with its division of powers, has been substituted a compact and efficient government by a commission composed of a few men vested with complete legislative and executive power.

The commission form of city government in its present form was first established by the city of Galveston, Texas, after the disastrous flood of 1900, which destroyed about one-third of the city with a loss of several thousand lives. In the face of such a disaster the existing government was helpless, and in its place was set up a government of five commissioners elected by the people of the city, one of the commissioners holding the office of mayor. This form of government was not intended to be permanent, but only to serve until the city could be reconstructed. But the plan worked so well, that it was decided to retain it as the permanent form of government for the city. Several hundred other cities have since obtained new charters providing for city government according to the Galveston plan or some modification of it. The commission form of government for cities possesses substantial advantages, but serious objections have been urged against it, notably the concentration of power in so few hands, but on the whole it is supposed that the advantages outweigh the disadvantages. The plan is still more or less experimental.

**129. The City-Manager Plan.**—The fullest recognition of the fact that the government of a city is primarily a matter of administration and business has been shown by the cities which have adopted the so-called city-manager plan of government, the central feature of which is the employment of an expert administrative official whose position corresponds closely with that of the general manager of a business corporation. This

plan may be employed by cities having either the mayor-and-council or the commission form of government, but so far it has been adopted mainly by cities with commission government.

The small city of Staunton, Virginia, first brought this plan into prominence by its appointment of a city manager in 1908, but the first large city to adopt the plan was Dayton, Ohio, which in 1914 put into effect a combined commission and city-manager plan of government. According to this plan a commission of five members is elected from the city at large for a term of four years, and these enact ordinances and fix the tax rate, vote appropriations, and direct the general affairs of the city, and appoint a manager, who is well paid and holds his office at the pleasure of the commission. The manager acts as business adviser to the commission, but has no vote. He enforces the ordinances, appoints or employs subordinate officials or employees, and directs their activities; prepares the annual estimates of expenditures, makes contracts and purchases, and, in general, acts as the business manager of the corporation.

More than 200 towns and cities have adopted the city-manager plan, but it is too recent an innovation in city government to justify any conclusion as to its merits as a plan for general adoption. Plainly its success or failure depends mainly in every case upon the kind of man secured as manager, and the question is whether the selection of the manager can be kept out of politics, and also whether a sufficient number of competent men can be found to supply the demand.

**130. Municipal Courts.**—Municipal courts are inferior courts held by the mayor, city recorder, police judge or justice, or other designated officer. They usually have both civil and criminal jurisdiction, criminal jurisdiction being limited to petty offenses. When distinctively criminal courts they are sometimes known as police courts. They have jurisdiction of all prosecutions for violations of municipal ordinances and of such offenses against the state laws committed within the

municipal limits as they may be invested with by the legislature.

In most large cities there are now juvenile or children's courts



CHILDREN'S COURT IN ONE OF OUR CITIES

in which youthful offenders are dealt with, the main object of these courts being to save and reform young delinquents rather than to punish them as if they were adults. Only a small minority of the children brought before these courts are sent to reformatories, most of them being released on parole. Sev-

eral of the larger cities have also established night courts for the prompt examination of persons arrested at night. Innocent persons so arrested are thus spared the annoyance of being kept in prison until they can be examined or tried in the regular courts. Another new kind of court has been established in some cities known as the court of domestic relations, which has jurisdiction of difficulties between husbands and wives and controversies over the custody of children and similar matters.

Besides the local municipal courts, there are also in all cities courts of general jurisdiction belonging to the state judicial system. All the state courts, except the county courts where the county-seat is not a city, are located in cities.

### Questions

1. What is the basis of the government of a municipal corporation? If you live in a municipal corporation, tell when its charter was obtained. Was it voted on by the people?
2. What are the three main forms of municipal government? Which do you have in your city? Who is the mayor of your city? The city manager (if any)? Do you know any of the members of the city council?
3. What is supposed to be the main advantage of the commission form of city government? How did this form of government start?
4. What is the city-manager plan of government? When and where was it first tried?
5. What courts are there in your city? Is there a juvenile court?

## *PART II*

### CIVIL AND POLITICAL RIGHTS AND PRIVILEGES

#### CHAPTER XV

##### **LIBERTY AND CIVIL RIGHTS**

131. **The Constitutional Guaranties.**—No feature of our constitutional system is more striking than the protection afforded to individuals in their rights of person and of property. Every government worthy of the name makes some provision for the protection of individuals against each other, as well as for the protection of the government itself. Crime, whether against the state or the individual, is punished and guarded against, and courts are established for the adjustment of private controversies. But only in enlightened countries with constitutional governments is the individual protected against oppression by the government itself. At times most governments have been oppressive, and in such cases the people's only remedy has usually been an appeal to the mercy of the rulers or open revolt against them. Under our constitutional system the individual is protected by various guaranties known collectively as a "Bill of Rights."

The first bill of rights in America was a part of the Virginia constitution of 1776. It was based largely upon the English bill of 1689. The federal Constitution as originally adopted contained no bill of rights. There were several clauses protecting persons accused of crime, but there were no guaranties in other cases. This was regarded as a serious defect in the Constitution, and various guaranties were at once added in the first nine amendments, which were adopted in 1791. These

guaranties constitute a federal Bill of Rights, and are restrictions upon the federal government only. There are also several restrictions upon the states in the original Constitution, but the most important restrictions upon the states are found in the Fourteenth and other late amendments. Many guaranties applying to the states only are found in the state constitutions. In the main they are about the same as those found in the federal Bill of Rights. The guaranties usually take the form of prohibitions, for example, that no person shall be deprived of life, liberty, or property without due process of law, but some of them are affirmative in form, such as the guaranty of the right of trial by jury. In this chapter the various guaranties in the federal Constitution will be explained.

**132. Titles of Nobility.**—The Constitution provides that, "No title of nobility shall be granted by the United States," and also that, "No state shall . . . grant any title of nobility." This prohibition has been called the "corner-stone of republicanism." Probably no one act of the government could so change the character of American institutions as the granting of hereditary titles of nobility. There can be no complete democracy if the government sets up one class of the people above the rest. American democracy rests upon the principle announced in the Declaration of Independence that all men are created equal. This principle is embodied in the prohibition of the granting of titles of nobility.

By this guaranty the government is prevented from creating an aristocracy based upon artificial distinctions. However humble may be the circumstances of his birth, the way is open to the citizen of the United States to rise to the highest positions in the country. Several of the Presidents and many of the most distinguished statesmen and other leaders have risen from poverty and obscurity. In this country there is an aristocracy of character, or intellect, or achievement to which men win admittance by their own efforts or abilities, but we have no titled aristocracy raised above the common people by the favor of the government.

**133. Religious Liberty.**—The First Amendment to the Constitution provides that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It is also provided in Article VI of the Constitution that "no religious test shall ever be required as a qualification to any office or public trust under the United States." These prohibitions apply to the federal government only, but similar provisions are found in the state constitutions. These guaranties establish the complete separation of church and state in this country, and secure to the people the inestimable blessing of religious liberty. So accustomed are we to religious liberty that we may easily fail to realize how great a blessing it is. Some of the crudest tragedies of history have attended the establishment of an official religion. History contains no darker pages than those which record the persecutions inflicted by the government in the name of religion.

At the time of the settlement of the American colonies religious liberty was practically unknown in the world. In all European countries there was an established church supported by the state, and all persons who did not adhere to the established religion were discriminated against, if not actually persecuted, on account of their religious beliefs. In England religious *toleration* was securing a foothold, that is, dissenters from the state religion were allowed to practise their own religion unmolested. They were no longer thrown into prison or burned at the stake for conscience' sake. But they did not have real religious *liberty*; they were subject to various disabilities and did not enjoy all the civil and political rights allowed to members of the established church. For example, they could not hold public office or attend the universities of Oxford or Cambridge. At the same time they were taxed along with the rest of the people for the support of the state church.

In America conditions were much the same as in England. The Church of England was established in Virginia and some other colonies and the Congregational Church in New Eng-

land except Rhode Island. Only in Rhode Island was there complete religious liberty. To Roger Williams belongs the glory of having established in that colony what was probably the first organized community in the world in which full religious liberty was enjoyed by all. At the close of the Revolution religious liberty was the rule in several states. The Virginia Bill of Rights of 1776 declared that "all men are equally entitled to the free exercise of religion, according to the dictates of conscience." This is the universal doctrine in the United States.

The First Amendment forbids the "establishment of religion" and "prohibiting the free exercise thereof." But what do these terms mean? The establishment of religion in the constitutional sense means the setting up of a state church, or the support of religion by the state. The prohibition was aimed at a state-supported church such as had existed in Europe and the colonies. The amendment was not intended to prohibit all recognition whatever of religion by the government, and must be interpreted in the light of its purpose, which was to prevent the setting up of an official state church and to secure religious liberty to the individual. So interpreted, the amendment is not violated by the incidental recognition given to religion by the government, so long as no particular sect is favored over others. Thus, the provision made for chaplains and religious services for the army and navy and for the two houses of Congress is not deemed a violation of the amendment.

The levying of taxes for the support of churches and religious establishments would probably be the establishment of religion, but the exemption of church property from taxation is not objectionable on this ground, provided the exemption applies to all sects alike. Provision for sectarian instruction in public schools would also violate the prohibition. So would a statute requiring the profession or practice of any form of religion. But no person has a right under a pretext of religion to violate the ordinary laws passed for the health, safety,

morals, and good order of society. The words "prohibiting the free exercise of religion" are to be taken in their natural and ordinary sense, and may not be strained so as to prevent the enforcement of such laws. No one has a right to commit a crime under cover of the right to religious liberty. Thus polygamy may not be practised in this country even as a religious institution. Nor may one escape prosecution for unlawfully practising without a license the art of healing the sick on the ground that his religious system repudiates the ordinary modes of healing.

**134. Sunday Laws.**—Throughout this country, either by law or custom, Sunday is observed as a day of rest from ordinary pursuits. Many of the states have statutes prohibiting secular employments on Sunday, and in some states the prohibition extends to travelling or indulging in public sports or amusements. Congress has no power to pass a general Sunday law for the whole country, but the post-offices and other federal offices, like the state and municipal offices, are closed on Sunday, and in general the federal and state governments conform to the custom of the country in respect to Sunday observance. The Constitution itself provides that in computing the ten days allowed the President for returning a bill, Sunday shall be excepted.

Sunday laws are valid, not as regulations of religion, but as police regulations adopted for the physical, social, moral, and economic welfare of the people. All recognize that periodic days of rest are absolutely necessary, and one day in seven is commonly accepted as the right proportion of days of rest to days of labor. The legislature may, therefore, set apart one day in the week as a day of rest. The question is, which day? Plainly the same day must be selected for all, or there will be confusion. In selecting the day the choice of the majority must control. But in this country the majority is in favor of Sunday, and this day is therefore selected as the day of rest for all. If the majority should ever prefer some other day, it will be the duty of the legislature to designate that day. But

while the legislature may set apart Sunday as a day of rest, it may not require the people to attend church or exercise religion in any way, but only to abstain from ordinary pursuits.

**135. Freedom of Speech and of the Press.**—The First Amendment also provides that Congress shall make no law “abridging the freedom of speech, or of the press.” The importance of this provision consists mainly in securing to the people the right, in a proper manner, to criticise the conduct of the government and of public officers. Democracy is essentially government by public opinion, and public opinion is developed and expressed mainly by discussion and through the printing-press. Without freedom of speech and of the press, real democracy is impossible.

There has been much discussion and some difference of opinion as to the meaning of the terms “freedom of speech and of the press.” All agree that such freedom does not mean complete liberty to say or publish anything whatsoever about individuals or the government, regardless of the nature and effect of the words used. This would be not freedom but license. The constitutional guaranty was not intended to do away with the law of slander and libel; it does not protect the individual in blasting the character of his neighbor by slanderous utterances, nor in the publication of obscene or immoral writings, nor in uttering or publishing sentiments that might imperil the existence or interfere with the operations of the government, or obstruct the administration of justice. On the other hand, freedom of speech and of the press does include the right of honest criticism of individuals and of the government for any proper purpose.

One may urge the change of the laws, or even of the form of the government, by peaceful and lawful methods, but the freedom of speech and of the press does not include the right to advocate disobedience to law or the use of force or violence in opposition to the government. The distinction is between a protest against the law in an effort to get it changed in the manner prescribed by law, and incitement to a violation of

the law while it remains a law. It is hardly necessary to add that freedom of speech does not include the right to interrupt or disturb public meetings conducted by others, or to use the streets, which are intended for purposes of travel, as speaking places, without permission of the municipal authorities.

**136. Right of Assembly and Petition.**—Closely related to the freedom of speech and of the press are the rights secured in the constitutional provision that Congress shall make no law abridging "the right of the people peaceably to assemble, and to petition the government for a redress of grievances." The right of the people peaceably to assemble for lawful purposes has always been regarded as one of the rights of citizens under a free government. This right must, of course, be exercised with due regard for public order. Assemblies of the people for social, religious, educational, commercial, or political purposes are very common, and play an important part in the development of public sentiment and the promotion of the public welfare. The right to circulate petitions and secure signatures to them and present them to the president, or to Congress, or to other officers or departments of the government, is frequently exercised. Monster petitions bearing thousands of signatures are sometimes presented to Congress. Of course any citizen may at any time write personally to members of Congress or any officer of the government.

**137. Right to Keep and Bear Arms.**—It is provided in the Second Amendment that: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." At the time of the adoption of the Constitution there was great distrust of standing armies, and reliance for military protection was placed largely in the militia. This amendment is intended primarily to safeguard the development of a citizen soldiery so as to make a large standing army unnecessary. It also protects against any attempt by the government to disarm the people for the purpose of setting up a despotism. The prohibition applies only to the federal government, and does not affect the power

of the states to regulate the drilling and parading of men in arms. Nor does it apply to laws prohibiting the carrying of concealed weapons.

**138. Protection of the Home and Privacy.**—The Third Amendment provides that: "No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law." This guaranty protects the people against one of the most oppressive acts of governments, the placing of soldiers in private homes and requiring their unwilling hosts to take care of them. One of the grievances complained of in the Declaration of Independence was that the British king had quartered large bodies of troops among the people.

The Fourth Amendment provides that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This applies only to the federal government, but similar provisions are found in state constitutions.

It is important in the interest of society that public officers should at times have the right to enter the homes of individuals, and even to search their persons and effects, for otherwise the enforcement of law might be impossible. But it is essential to liberty that this right be strictly limited to the necessities of the case and be exercised in a reasonable manner. Under the Constitution no such search can be made without a proper search-warrant, issued and made out as required by the guaranty. General warrants issued in blank, without names or other specifications of the place, etc., to be searched, but giving the officer unlimited authority to search and seize at discretion, are illegal and a gross abuse. The protection extends not only to one's dwelling-house, but also to his person, his baggage, his sealed mail in the post-office, and to his effects generally. None of these can be searched without a proper warrant.

**139. Due Process of Law.**—In the Fifth Amendment it is provided that no person shall “be deprived of life, liberty, or property, without due process of law.” This applies to the federal government only. The Fourteenth Amendment provides that “nor shall any state deprive any person of life, liberty, or property, without due process of law.” Thus the individual, whether citizen or alien, is protected against being unlawfully deprived by either government of his life, liberty, or property. This is one of the most ancient of the guaranties of English liberty. Its principle is found in the provision of the Magna Charta (A. D. 1215) that: “No free man shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or anyways destroyed, nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.”

The guaranty is a very broad one. It means that the government must give a person a “square deal”; that the laws must operate equally upon all, and that no one shall be dealt with by the government in an arbitrary, unreasonable, or unjust manner, but only in accordance with established principles of law and justice. In the words of the Supreme Court: “Due process of law, within the meaning of the amendment, is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.”

As applied to *legislation*, the due process clause means that the statute must be *reasonable* and not a mere arbitrary or unnecessary exercise of power, and that it shall operate alike upon all who come within its scope. Statutes may be passed for the good of the public which may interfere with the freedom of the individual; he may be forbidden to do things which he may wish to do, or required to do things which he does not wish to do. Under the due process clause, all such laws, to be valid, must be reasonably necessary for the public good. If they are of real advantage to the public, they are valid, although they may interfere with what the individual con-

siders his rights; but any arbitrary or unreasonable interference with the freedom of individuals without corresponding benefit to the public, is unconstitutional as being a deprivation of life, liberty, or property without due process of law.

As applied to *judicial proceedings*, that is, to the trial of civil and criminal cases, due process requires (1) that the court or other tribunal shall have jurisdiction of the case, and (2) that there shall be notice and opportunity for a fair hearing given to the parties. If these two conditions are satisfied, the mere forms of procedure are immaterial. If the party has his "day in court," with an opportunity to present his cause or defense, and the case is fairly tried and decided, the requirements of due process are satisfied.

**140. Life, Liberty, and Property.**—The terms "life, liberty, and property," used in the due process clause, include every right of an individual which can come within the range of law. The term "life" needs no definition; the guaranty, however, extends to the protection of the individual in the full enjoyment of his body without injury, mutilation, or dismemberment. In a general sense, the term "liberty" means freedom from restraint. According to John Locke, "the natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule." Such natural liberty exists nowhere on earth. Only a Robinson Crusoe, living alone, could have this kind of liberty.

Civil liberty, or the liberty of an individual living among other individuals, is a very different thing from natural liberty. Civil liberty is freedom from all restraints except those imposed by law. Complete civil liberty includes religious freedom. It does not include political liberty, which is the freedom of the people to govern themselves, the term properly applying to the people as a whole, rather than to individuals. Political rights, so called, or privileges, such as the right to vote, or to hold office, or to serve on juries—in short, the right to take part in the government, are not included in the term "liberty" in the constitutional guaranty.

The constitutional conception of liberty is based upon the principle that all persons are equal before the law, and that, therefore, the liberty of every individual is limited by the equal liberty of all other individuals. One man's liberty ends where another man's liberty begins. True liberty can exist only under the reign of law, which defines and maintains the boundaries of each man's freedom with reference to that of his neighbor. In the words of the Supreme Court: "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is liberty regulated by law."

The term "property," as used in the guaranty, includes everything which one can own, such as land, with buildings or other improvements on it, and all kinds of personal property, with the right to acquire, use, enjoy, hold, and dispose of such property. The right to contract or to labor may be regarded either as property or as a part of one's liberty; in this and in some other respects, the terms liberty and property overlap.

**141. Equal Protection of the Laws—Class Legislation.**—In the Fourteenth Amendment, in close connection with the due process clause, is the provision that the state shall not "deny to any person within its jurisdiction the equal protection of the laws." This clause embodies the fundamental American principle that all men are equal before the law, and that the government shall be administered for the benefit of all the people and not in the interest of any particular class or faction. The guaranty extends to any person within the jurisdiction of the state, whether citizen or alien, natural person or corporation.

Equal protection of the laws means subjection to equal laws, applying alike to all persons in the same situation. The guar-

anty was intended to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. It does not, however, forbid special legislation with reference to particular classes of persons or particular occupations or industries which may need special protection or regulation. The Constitution nowhere forbids class legislation, but under the equal protection clause class legislation, to be valid, must satisfy two requirements: (1) the classification must not be arbitrary, but must be based upon some reasonable principle; and (2) all the members of the same class must be treated alike.

Many cases have come before the Supreme Court involving the application of this guaranty, and statutes affecting particular classes have been sustained whenever reasonable. A state, in its legislation, may discriminate between females and males, or between minors and adults, or between the sane and the insane, or between different occupations or industries, or, in general, wherever there are differences in the nature, circumstances, or needs of the subjects of the legislation justifying differences in regulation. A law regulating the hours of labor in dangerous callings, or of women or children, without regulating the hours of labor in all occupations or of all workers, is class legislation, but is nevertheless valid if reasonable. So, also, a law requiring railway companies to provide equal but separate accommodations for white and colored passengers is valid; equal protection does not require that the accommodations shall be the same, but only that they shall be equal. But a law providing for sleeping or dining cars for the exclusive use of whites, without making similar provision for colored persons, is a denial of equal protection, although the number of negroes applying for such accommodations may be small. The exclusion of negroes from service on juries is a denial of equal protection, though it seems that the exclusion of women is not. The Supreme Court has recently held that a municipal segregation ordinance providing for the separation of the races in the residential portions of the city is void, although it ap-

plies to both white and colored races alike. Such a requirement is an unreasonable interference with the right of any person to hold property.

The prohibition is directed against action by the *state* only, the provision being that the state shall not deny equal protection: it is not intended to prevent discrimination by individuals. There is nothing in the federal Constitution or laws prohibiting discrimination by individuals, such as hotel-keepers, theatre proprietors, common carriers, etc.

**142. Protection to Contracts.**—The Constitution provides that, "No state shall . . . pass any . . . law impairing the obligation of contracts." The security of contract obligations is absolutely essential to commercial prosperity. If a person cannot be made to live up to his contracts or pay his just debts, business is in a bad way. The object of this guaranty is to prevent the states from passing laws permitting the repudiation of contracts and debts. At the time of the adoption of the Constitution such laws, passed in the interest of debtors, were common, and as a result business was thoroughly disorganized in some sections of the country and commercial dishonesty was prevalent. The constitutional guaranty put an end to this. Probably no constitutional provision, with the possible exception of the commerce clause, has done more for the commercial prosperity of the country. The prohibition applies to the states only; the Constitution does not prohibit the impairment of contracts by Congress, but to some extent the due process clause may operate as a restraint upon Congress.

The contract clause protects the contracts of any parties whatsoever, whether individuals, private corporations, municipal corporations, or the state itself. The state can no more repudiate its own contracts than it may permit individuals to do so. Under this clause any state law which destroys or makes unenforceable an existing contract is void. A state cannot repudiate its bonds lawfully issued, nor recall grants of land to individuals, nor can a city council revoke a valid fran-

chise granted to a corporation. A charter granted by a state to a private corporation is a contract within the meaning of this clause, and the state cannot alter or repeal such charter without the consent of the corporation, unless the right to do so has been expressly reserved. In order to protect itself the state now usually reserves the right to alter or repeal charters granted by it. When this is done the state may afterward amend or repeal the charter without violating the contract clause.

**143. Protection to Property—Eminent Domain.**—There is no greater incentive to industry and thrift than the desire and opportunity to acquire and hold property. Unless a man is assured that he will be permitted to get and keep what he earns and saves, it is useless to expect him to do more than is necessary to keep himself alive. The right of private property lies at the foundation of all individual and national prosperity. This great fact is fully recognized by American constitutions. Ample safeguards are provided to protect this right. The provision that no person shall be deprived of his property without due process of law secures the individual from having his property arbitrarily or illegally taken away from him. This protects him from being despoiled of his property by the government itself, while the criminal laws protect him from being robbed or cheated by private individuals.

But even the right of private ownership must yield at times to the exercise by the government of the power of eminent domain. This is the right of the government to condemn and appropriate private property for public use. Only through the protection afforded by the government is it made possible for the individual to enjoy life and property in peace and security. It is but just, therefore, that his property should be available for the public use when needed. But under the provisions of the constitutions of the United States and of the several states, private property cannot be taken for public use without just compensation.

The power of eminent domain is confined to the taking of

property for *public* use; neither with nor without compensation may the government condemn private property for private use. No one may be compelled against his will to surrender his property for the private use of another person, however much the latter may be willing to pay for it. The condemnation of property for public roads or streets, sites for public buildings, bridges, ferries, water-works, lighting and power plants, railroads, telegraph and telephone lines, canals, irrigation and drainage systems, public cemeteries and parks, and the like, are familiar instances of condemnation for public use.

The power of eminent domain may be exercised by the government itself, or it may be delegated by the government to private corporations or individuals. If private property is desired for public use, an effort will be made to buy it, but if the owner is not willing to sell at a satisfactory price, condemnation proceedings are brought in court and commissioners are appointed to fix a fair price for the property, which the owner will be required to accept.

**144. The Writ of Habeas Corpus.**—The Constitution provides that: "The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." This applies to the federal government, but the writ is also secured by state constitutions or laws against denial by the state governments. For a time the privilege of the writ was suspended by the federal government during the Civil War in some parts of the country.

No more important safeguard for personal liberty is known to our law than the writ of *habeas corpus*. This is a writ or order issued by a court or judge directed to a person detaining another person in his custody, commanding him to produce the body of the person so detained before the court or judge so that the lawfulness of such detention may be inquired into. Anciently the writ was in Latin and its name came from two words, *habeas corpus* ("have the body" of the person detained), which occurred in the writ. When the prisoner is

produced, if the detention is found to be lawful, he is returned to custody, but if he is found to be unlawfully held, he is set at liberty. The writ of *habeas corpus* is the great remedy for all unlawful imprisonment or detention of the person, whether the detention be by a public officer or by a private person. It applies whether the person is detained on a criminal charge or for any other reason. It prevents arbitrary imprisonment without trial or any unlawful detention of one person by another.

145. **Trial by Jury.**—The right to a jury trial is guaranteed by the federal and state Constitutions. The Seventh Amendment of the federal Constitution secures the right to jury trial in civil suits at common law where the value in controversy exceeds twenty dollars. In criminal prosecutions the right to a speedy and public trial by an impartial jury is guaranteed by the Third Article and the Sixth Amendment. The jury contemplated by the Constitution is the common-law jury of twelve, rendering a unanimous verdict.

These provisions apply only to trials in the federal courts. The federal Constitution does not in terms require a jury trial in state courts. The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law," but this does not necessarily require a jury trial in all cases. Jury trial is, however, preserved in all the states by state law. But some changes have been made. In some states a jury may consist of less than twelve persons, and sometimes the verdict is not required to be unanimous. A person entitled to demand a jury trial may waive his right in a civil case, but so great is the importance attached to the jury in criminal trials that the right to a jury trial cannot be waived by the accused.

A jury is a body of laymen (not lawyers or judges), at common law twelve in number, selected by lot, to ascertain, under the guidance of the judge, the truth in questions of fact arising in a civil or criminal trial. Upon the facts as found by themselves from the evidence, and under the instructions of the

judge as to the law applicable to the case, they render a verdict, either for the plaintiff or for the defendant in a civil case, or of guilty or not guilty in a criminal prosecution. The right to trial by jury was one of the great rights secured by the Magna Charta. While the jury is used in civil as well as in



A COURT ROOM.

The judge is shown seated at the high desk below the picture of Justice. On his left is the court clerk, on his right a witness on the witness-stand. Next to the witness is the court stenographer. The group seated before the judge are the counsel on both sides of the case. In a criminal case the defendant also sits at this table. The men on the left of the picture seated in two rows are jurors in the jury box.

criminal trials, it is regarded as especially important to the accused in criminal cases.

The selection of an impartial jury is a matter of the greatest importance, especially when one is on trial for his life. The qualifications of jurors are prescribed by law. There are many exemptions allowed, so much so that some of the best and most intelligent citizens are never called upon for jury service. Women are eligible as jurors in some states. The trial jury is sometimes known as the petit or petty jury, to distinguish it

from the larger or grand jury by which persons accused of crime are presented for trial.

**146. Guaranties in Criminal Cases.**—Nothing more clearly exhibits the brutality of some of the older governments of the world than their treatment of criminals and persons accused of crime. History abounds in accounts of persons, both innocent and guilty, who have been thrown into vile prisons and left without any kind of trial until they died of starvation, torture, or disease, or, if released, came from their cells mental and physical wrecks. Even when a trial was afforded, it was often a mockery of justice, and conviction was usually followed by cruel and barbarous punishments even for minor offenses. In many cases persons unacceptable to the government were thrown into prison without even the pretense of a criminal charge against them.

None of these horrors are legally possible in this country. Extraordinary protection is afforded to persons accused of crime. The federal Constitution contains a number of specific guaranties, which are supplemented by similar or additional guaranties in the state constitutions. These guaranties extend not only to citizens but to all persons whatsoever in the country. They will be explained in the next three sections.

**147. Bills of Attainder and *Ex Post Facto* Laws.**—The Constitution prohibits both Congress and the states from passing bills of attainder and *ex post facto* laws. A *bill of attainder* is an act of the legislature inflicting punishment without a judicial trial, either by condemning a person to death, or otherwise punishing him, or by confiscating his property, or both. Such bills were once commonly resorted to in England, either because the accused party was out of reach, or because the evidence of his guilt was not sufficient to convict him on a fair trial, or because the offense with which he was charged was not by law a crime. Sometimes the object of a bill of attainder was to get rid of a person obnoxious to the government. Bills of attainder were passed during the Revolution by some of the states against Americans who remained loyal to the British crown. Such bills are plainly highly tyrannous.

An *ex post facto* law is a law which makes an act a crime which was not such when done, or which increases the punishment of a crime or changes the rules of evidence or procedure to the disadvantage of the accused, after the crime was committed. A mere change in the punishment, provided it be not made more severe, is not within the prohibition. Thus a law changing the punishment for murder from death to life imprisonment, or the form of execution from hanging to electrocution, is not an *ex post facto* law in the constitutional sense, though applied to a crime committed before the law was passed.

148. **Treason.**—Treason is the violation of one's allegiance to his sovereign or government. It has been declared to be the highest crime known to the law. Chief Justice Marshall said "there is no crime which can more excite and agitate the passions of men than treason." As defined in English law, the crime of treason includes a number of different acts, and formerly included what is known as "constructive treason," comprising acts which, though without treasonable intent, were punished upon a pretext that they were in law equivalent to actual treason. Innocent persons were sometimes put to death on charges of constructive treason. The punishment for treason was also most severe. At common law the sentence was that the guilty person be drawn to the place of execution, first on the ground, then on a hurdle or sledge; then hanged and cut down alive; his entrails taken out and burned before his face; his head cut off and his body divided into quarters. Thus he was "hung, drawn, and quartered."

No such barbarity is possible under the Constitution. It is provided that: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person at-

tainted." Congress has fixed the punishment of treason at death, or fine and imprisonment.

**149. Criminal Proceedings.**—The Fifth Amendment to the Constitution provides that: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." The Sixth Amendment provides that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." The right to a jury trial in criminal cases is also secured by Article III of the Constitution.

These provisions secure to the accused certain important rights which at times have been denied in criminal prosecutions. An infamous crime is one punished by an infamous punishment, such as death or imprisonment in the penitentiary. A grand jury, so called to distinguish it from the trial or petit jury, is a body of citizens summoned to consider evidence against persons accused of crime in order to determine whether they shall be brought to trial. At common law a grand jury consists of not less than twelve nor more than twenty-three men, at least twelve of whom must unite in a presentment or indictment.

A presentment is an accusation of an offense made by a grand jury without any indictment laid before them. An in-

dictment is a formal written charge of an offense prepared by the prosecuting attorney and submitted to the grand jury by him. If they think the evidence warrants it, the jury presents the indictment as a "true bill"; but if the evidence is insufficient, the matter is dropped. In case of presentment without indictment, an indictment must be drawn before the accused can be tried. The indictment is very important, for it informs the accused of the nature of the charge against him, and thus enables him to prepare for trial, and also identifies the charge and protects him against a second trial on the same charge.

The provision against being twice put in jeopardy means that one shall not be tried a second time for the same offense after having once been tried and acquitted. A second trial may be had, however, where the first trial was not completed, as where the jury failed to agree, or where the appellate court has reversed the judgment of the trial court and ordered a new trial. An accused may be convicted upon his own confession of guilt freely and voluntarily made. A plea of guilty, regularly entered, is a judicial confession, and warrants sentence. But while a person may be convicted upon his own *voluntary* confession, he may not be *compelled* in a criminal case to testify against himself.

The Eighth Amendment provides that: "Excessive bail shall not be required, nor cruel and unusual punishments inflicted." It is customary where persons are arrested for all but the most serious offenses to release them upon their giving bond with good security for their appearance when wanted for trial. If he does not so appear, or "jumps bail," the amount of the bond is collected. Since the object of giving bail is to enable the accused to obtain his release pending his trial, the amount of bail must not be fixed so high that he cannot give bond.

Punishments under the common law and under the English statutes in force in Blackstone's time were very severe. About 160 offenses, many of them of a trifling character, were punishable with death. Little or no account was taken of extenuating circumstances. In earlier times the most barbarous punish-

ments were inflicted, such as drawing and quartering, burning alive, mutilating, and branding. These, as well as ruinous fines, are prohibited by the Eighth Amendment.

The above provisions apply only to proceedings in the federal courts, though similar provisions are found in state constitutions. Some modifications have been made in state practice. In some states proceeding by information presented by the prosecuting attorney is permitted in place of indictment by the grand jury. So long as the essential elements of a fair trial are preserved there is no denial of "due process."

### Questions

1. What is a Bill of Rights? Make a list of the guaranties of personal rights found in the federal Constitution and its amendments applying to the federal government. Make a similar list of those applying to the state governments. To which government do the guaranties in the first nine amendments apply? Do the guaranties apply to aliens or only to citizens?
2. Some persons claim that we have outgrown the federal Constitution, and that the people of the twentieth century should not be bound by a constitution framed by men of the eighteenth century. Which of the ancient guaranties in the Constitution do you think we ought to cut out?
3. What guaranty secures equality? Religious liberty? What is the difference between religious toleration and religious liberty? Do the exemption of church property from taxation or the prohibition of work on Sunday amount to an establishment of religion? Could the legislature rightly and constitutionally prohibit playing golf or baseball on Sunday as recreation? How about professional baseball or moving-picture shows?
4. What guaranty secures freedom of speech and of the press? What effect might the suppression of such freedom have on democracy? Suppose one publishes in a newspaper that the President is unfit for office and should be removed by impeachment, and, under a law so providing, he is punished therefor. Would this be abridging the freedom of the press? How about a law forbidding the publication of any article advising the disobedience to a law on the ground that such law is unjust? A man got up in a church in New York and interrupted the service by making a speech. He was imprisoned for disturbing a religious meeting, and he claimed that he was denied freedom of speech. Was he right?
5. Suppose Congress were to pass laws forbidding any one to present

a petition to Congress urging the amendment of the Constitution so as to allow slavery in this country, and also forbidding public meetings for the purpose of arousing sentiment in favor of such amendment; would the law be constitutional?

6. Would an act of Congress forbidding the carrying of concealed weapons in the District of Columbia be constitutional?

7. Would an act of Congress providing that whenever a federal prohibition officer thought that any person was operating a whiskey-still in his home he might enter the house to look for the still be constitutional?

8. What is "due process of law"? How many times does the expression occur in the federal Constitution? Would a state law providing that no one could engage in farming unless he had first stood an examination on farming and received a license from a state examining board be constitutional? How about a law requiring physicians to be so licensed? Would a law authorizing a prohibition officer, upon catching a bootlegger in the act of selling liquor, to fine him on the spot be constitutional?

9. What is civil liberty? Political liberty? What is class legislation? Is class legislation prohibited by the Constitution? Would a law defining a day's work for women to be eight hours and for men to be ten hours be class legislation? Would such a law be valid?

10. If a state grants a charter to a bank to run for twenty years, and does not reserve the right to repeal the charter, may it lawfully be repealed after ten years? How if the right to repeal is expressly reserved?

11. If the state needs a certain plat of ground as a site for a court house, but the owner will not sell, under what power and upon what conditions may the state obtain the property?

12. Name some of the uses of the writ of *habeas corpus*. How many jurors constitute a jury at common law? Would an act of Congress providing that in civil cases trial in federal courts may be with a jury of nine and that seven may find a verdict be valid?

13. What is a bill of attainder? An *ex post facto* law? What is treason against the United States? Name some of the guaranties for the protection of persons accused of crime.

## CHAPTER XVI

### CITIZENSHIP

150. **Citizenship in General.**—A citizen of a country is a member of the nation, owing allegiance to and entitled to the protection of its government. In this country there is a dual citizenship, one is both a citizen of the United States and a citizen of the state; but, since the federal and state governments operate in different spheres, there is no conflict in the rights and duties belonging to the two citizenships. A person may be born a citizen or he may become a citizen by naturalization.

The Fourteenth Amendment to the Constitution provides that: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." Under this provision any person born in the United States is a citizen, whether the parents are citizens or aliens, unless not subject to the jurisdiction of the United States. The exception applies to Indians maintaining tribal relations and persons who, under the rules of international law, are not subject to local jurisdiction, for example, members of foreign diplomatic legations.

The above provision does not include all cases of citizenship. Children of citizens of the United States who are born abroad are also citizens of the United States, and minor children of aliens, born without the United States, become citizens upon the naturalization of their father. Husband and wife should, of course, be citizens of the same country, and Congress has provided (1922) that the right of any woman to become a naturalized citizen shall not be denied because of sex, or because of marriage. An American-born woman retains her citizenship when she marries an alien (provided he is eligible

for citizenship). An act of Congress provides for expatriation, or renunciation of citizenship by American citizens, except when this country is at war.

**151. Naturalization.**—Naturalization is the act or process by which an alien is made a citizen. The Constitution gives to Congress power "to establish an uniform rule of naturalization." The first naturalization law was passed in 1790, since which time there has always been a naturalization law in force. The policy of the government has been liberal toward the naturalization of foreigners. There are, however, some restrictions. As a matter of course no one can be naturalized who cannot enter this country under the immigration laws. Restrictions on immigration thus operate as restrictions on naturalization. By an act of 1882, still in force, Chinese may not be naturalized, and by an act of 1906 it is provided that no anarchist or polygamist shall be naturalized, nor any person unable to speak the English language. The requirement that the petitioner shall sign his petition for admission in his own handwriting limits naturalization to persons who can sign their names.

The general administration of the naturalization laws is in charge of the Bureau of Naturalization, which is a branch of the Department of Labor. Jurisdiction to naturalize aliens is conferred upon the United States district courts, the supreme court of the District of Columbia, and state courts of record of general jurisdiction. An alien must have resided in this country for five years before he may be naturalized. There are three steps in naturalization proceedings: (1) at least two years before admission as a citizen the applicant must declare on oath before the court his intention to become a citizen of the United States; (2) not less than two nor more than seven years after his declaration of intention he must file a petition setting forth particulars showing him to be qualified under the law for admission; (3) he must declare on oath in open court that he will support the Constitution and laws of the United States and bear true allegiance to the United States, and that he renounces his

former allegiance. A foreign-born woman may no longer become a citizen through marriage, but must herself be naturalized.

The naturalization laws apply only to individuals, but groups



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APPLICANTS FOR FIRST CITIZENSHIP PAPERS.

or large bodies of persons may be admitted to citizenship by one comprehensive act. This is called collective naturalization. Thus by the treaty with Mexico in 1848 Mexicans remaining in the territory ceded to the United States were declared to be citizens of the United States, and by the joint resolution of Congress in 1845, admitting the republic of Texas into the Union, its citizens were made citizens of the United States. And by act of Congress United States citizenship was conferred

upon the citizens of Hawaii in 1900, and upon the citizens of Porto Rico in 1917. Also Congress has from time to time provided for the admission of groups or classes of Indians as citizens.

**152. Privileges and Immunities of Citizens.**—The Constitution provides that: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." The main object of this provision is to prevent the states from making discriminations in favor of their own citizens against the citizens of other states. It means that in respect to all rights which belong to citizens of the state *as such* each state must treat citizens of other states exactly as it treats its own citizens. A citizen of New York, for example, while in Ohio, is entitled to all the rights of a citizen of Ohio. He may engage in business, make contracts, buy, sell, and own property, and sue and be sued in the courts, upon precisely the same terms as a citizen of Ohio. At the same time he must, of course, observe the laws of Ohio. He is not entitled to *political* privileges in Ohio, such as the right to vote, or to hold office, or to serve on a jury. He is entitled only to the rights which belong to citizens of the state because of their citizenship alone, such as every citizen has regardless of age, sex, or anything but citizenship. The right to vote is not a privilege of citizenship, but in addition to citizenship requires other qualifications. A state does not permit all of its own citizens to vote, hold office, or serve on juries, but only those which have the prescribed qualifications. And these privileges it may restrict to its own citizens.

A citizen of the *United States* has, as such, certain "privileges and immunities" which are entirely distinct from the "privileges and immunities" which he has as a citizen of the state. These are protected from hostile state action by the provision of the Fourteenth Amendment that: "No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States." No complete list of these rights has ever been made, but among the privi-

leges and immunities belonging to federal citizenship which have been recognized by the Supreme Court are: the right to come to the seat of the government (Washington) on any proper business; to petition the federal government for relief; to assemble in a proper manner for the discussion of national affairs; to engage in interstate and foreign commerce; to use the navigable waters of the United States and to have access to its seaports; to claim the protection of the federal government when on the high seas or in foreign lands; to pass freely through the country from one state to another; and the right to return to the United States from abroad.

### Questions

1. What is a citizen of a country? In what two ways may one become a citizen? What is meant by the "dual citizenship" of the people of the United States? Who are citizens of the United States? Who are citizens of your own state? What is the effect of a woman's marriage on her citizenship?
2. What is naturalization? By what body are naturalization laws passed? What government agency administers the naturalization laws? What are the three steps in naturalization proceedings? What effect does the naturalization of an alien have upon the citizenship of his wife and minor children? What is "collective naturalization"?
3. What are some of the privileges and immunities of a citizen of a state? Would a state law be valid which provides that only citizens of the state may own land, sue, or vote in the state?
4. What are some of the privileges and immunities of a citizen of the United States? A child of Chinese parents was born in the United States; he made a visit to China, but on his return to this country the federal authorities attempted to exclude him under the statute which prohibits Chinese from entering this country. Did they have the right to do so? May a state prevent a citizen of the United States from entering or passing through the state?

## CHAPTER XVII

### SUFFRAGE AND ELECTIONS

**153. In General.**—Popular government cannot run itself. Government *by* the people can exist only where the people are willing to make the necessary sacrifices of time and trouble to keep it going. Citizenship in a democracy has its duties as well as its rights, and one cannot justly insist upon his rights unless he is willing to perform his duties. One of the rights of citizens is the so-called right to vote. But the ballot is of value only in so far as it is used as a means of obtaining or preserving good government, and upon the use made of it largely depend the liberty and happiness of the people. The possession of the ballot, therefore, places every holder under a solemn obligation to qualify himself or herself to use it well. This one can do only by paying serious attention to public affairs.

Unfortunately in this country there is a very general neglect on the part of voters of their civic duties. Many of them really care little or nothing for the right to vote. They voluntarily disfranchise themselves by failing to go to the polls. To the extent that the citizens fail to take part in public affairs, democracy must be pronounced a failure. However, the indifference of the average citizen toward elections is probably due not so much to his lack of interest in political affairs as to his realization of the impossibility of keeping in touch with them without practically making a business of it. The frequency of elections, and the great number of candidates and issues presented often make intelligent voting impossible. In many cases the voter cannot afford the time required to qualify himself to cast an intelligent vote, and in such circumstances he naturally feels little interest in the subject. But the American citizen is generally interested in public affairs, and shows this interest at the polls when the issues are simple and important. As will be

pointed out in the next chapter, the remedy for the indifference of the voter is to simplify elections so that he can vote intelligently.\*

The right to vote is a privilege granted by the state and not by the United States. Even the elective federal officers are chosen by state voters, whose qualifications are determined by the states. The Constitution of the United States does not confer the right to vote on any one, though it provides that the right to vote shall not be denied on account of race or sex. The state constitutions define the qualifications of voters, and state laws make elaborate provision for elections.

The times of holding elections are fixed by law, but Congress has power to alter any regulations made by the state for holding elections for members of Congress. National elections are held in November, and elections for general state officers are usually held on the same day. Local or municipal elections are commonly held at different times from the general elections. This is a wise arrangement, for the issues involved in local elections are usually different from those involved in general elections, and confusion is avoided by holding the elections at different times.

**154. Qualifications for Suffrage.**—It has never been considered essential in a democracy that every one should have the right to vote. Suffrage is not a privilege of citizenship as such, and everywhere many citizens are denied this right. Children, for example, are citizens, but they may not vote. The qualifications for suffrage vary in the different states. The suffrage is now much more liberally bestowed than in the early days of the republic. At the time of the adoption of the Constitution the ownership of a certain amount of property, or the payment of a

\* President A. D. White, of Cornell University, tells of a professor in the university, a native of Porto Rico, that "he was wont to marvel at the indifference of the average American to his privileges and duties, and especially at the lack of a proper estimate of his function at elections. I have heard him say: 'When I vote, I put on my best clothes and my top hat, go to the polls, salute the officers, take off my hat, and cast my ballot.'"—"Autobiography," vol. I, p. 366.

certain amount in taxes, was a prerequisite in most if not all of the states. For many years the prevailing rule throughout the United States has been universal manhood suffrage, that is, every adult male has or may acquire the right to vote. The adoption of the Nineteenth Amendment in 1920 extended the suffrage to women on the same terms as males. In a number of states they had already been given full or partial suffrage. The usual requirements for the suffrage are as follows:

(1) *Age*.—In every state the voter must be not less than twenty-one years of age.

(2) *Citizenship*.—In most of the states the voter must be a citizen of the United States, but in a few states aliens who have declared their intention to become citizens may vote.

(3) *Residence*.—The voter must reside in the state, and usually he must have resided in the state for a prescribed period, and in the election district for a shorter period.

(4) *Education*.—In some states the voter must possess some slight educational qualifications, such as the ability to read and write.

(5) *Payment of Taxes*.—In a number of states the voter must have paid certain taxes, for example, a poll tax.

(6) *Registration*.—In many states the voter is required to register a certain length of time before the election, and no one is permitted to vote whose name does not appear on the list of qualified voters. This requirement protects against fraudulent voters.

*Disqualifications*.—Usually certain classes of persons are denied the right to vote. Among these are idiots, insane persons, persons under guardianship, paupers, felons, persons convicted of treason or bribery, and duelists.

**155. Nominations and Elections.**—Elections are held for various purposes, but usually for the choice of public officers. “The administration of government consists in getting proper men.” So spoke Confucius. The form of the government and

the kind of laws are less important than that the government shall be well administered. This requires the selection of good men to administer it. The essence of democracy consists in the power of the people to choose their own lawmakers and public officers. The people cannot make and administer their own laws. All they can do satisfactorily is to choose the men to carry on the government for them, and sometimes to instruct their representatives as to what they want done. Thus the people may decide at the polls whether they want good roads built and whether taxes shall be increased to pay for them, but they cannot themselves build the roads or frame a tax law to raise the money. These functions they must turn over to their public officials.

The selection of the right men for public office is the main thing in a democracy, and the success or failure of democratic government depends chiefly upon the kind of men selected. In a small town or a rural community where the voters may know the candidates personally it is a simple matter for one to announce himself as a candidate for office and for the voters to judge of his qualifications, but it is very different in the case of state or national elections. Probably the most difficult as well as the most important problem of American democracy is the problem of getting good men elected to the legislature and the various public offices.

There are two steps in the selection of elective public officers: (1) the nomination of the candidates, and (2) the election or choice between the candidates nominated. Of these steps the more important is the nomination. If all the candidates are suitable men it makes little difference which ones are chosen. A change in the government from one set of good officers to another is hardly noticed in the life of the people. But good men cannot be elected unless they are nominated. The people can only choose between the candidates presented to them. The problem is to secure the nomination of the best men. Unfortunately the qualities which fit one to fill a public office successfully are not always found together with the qualities which

make one a good candidate. In every state there are many men well qualified for public office and who would be glad to serve, who can never be elected because they lack the personal gifts or the influence that are necessary to secure the nomination. Also the great expense of making a campaign for the nomination or election often places the more important offices beyond the reach of persons without wealth.

156. **Modes of Nomination.**—There are several modes of nominating candidates for office. In local elections candidates often announce themselves, and to some extent this is done in general elections. Such self-nomination or independent candidacy is practicable only where the candidate may reach the voters personally, without the aid of a political party. Generally there is no particular connection between local and general politics, and voters therefore to a great extent vote in local elections without reference to party lines. A popular candidate may receive votes from members of different parties. In general elections also candidates who have failed to receive the party nomination may announce their candidacy on an independent basis.

Nominations by a party are usually made either: (1) by a local meeting of members of the party called a *caucus*, or now more commonly known as a *primary*; or (2) by a nominating convention; or (3) by the voters themselves in an election known as the *direct primary*.

157. **Party Caucuses and Conventions.**—The caucus or primary is a meeting of the party voters in a local election unit, such as a ward, township, or precinct. At this meeting the party's candidates for the local offices are nominated. If offices of the larger units, such as the county, district, or state, are to be filled, the local meeting chooses delegates to conventions to be held for the larger units. These conventions, made up of delegates from the smaller units, nominate the party's candidates for the political areas for which the conventions are held, or they in turn choose delegates to still higher conventions representing larger areas. Thus the party voters of a township

elect at a primary their delegate or delegates to the county convention, and the various county conventions choose delegates to the state convention, and the state convention nominates the party's candidates for the state election.

Primary meetings are called by the local party managers. Of course only members of the party are entitled to participate in the meeting, each party conducting its own primaries. Tests are established to determine party alignment or loyalty. A common test is whether the applicant for admission voted the party ticket at the last general election. The determination of the voter's standing is almost entirely in the hands of the party managers or of the local meeting. The matter is largely governed by local party regulations. Lists of the recognized members of the party are compiled for the use of the party managers. If a voter is improperly denied admission to a party meeting, there may sometimes be a remedy under a state law defining party eligibility, but a person unlawfully excluded would rarely go to the trouble to assert his rights by an appeal to the courts.

As a rule party meetings are slimly attended. The average voter is fully occupied with his own affairs and takes very little interest in politics. Many of them never attend party meetings, and probably a majority do not even know when such meetings are held. Usually no effort is made by the party managers to get the voters out to the meetings or to notify them that the meetings are to take place. Only enough voters are assembled to ratify the slate or programme prepared in advance by the managers. Since the only place in which the individual voter may exert any real influence in the selection of his party's candidates or delegates, or in the adoption of its platform, is in the local meeting, his failure to attend the meeting or his exclusion therefrom by the party managers practically disfranchises him so far as party influence is concerned. He may, of course, vote for the party's candidates at the election, but so may the independent voter or even a member of the opposing party.

The indifference of the voter and the conditions under which

party meetings are held play into the hands of the party leaders, who are usually men who make politics a prominent, if not the main, business of their lives. Many of them are office-holders or candidates for office, while others play the game from a love of politics or because they make money out of it. To this small group of highly organized politicians the great mass of voters leave the management of party affairs and the selection of the candidates who, if elected, are to administer the government. The party managers themselves are often controlled by the party leader or "boss." The leaders of the local political units control the affairs of the larger units, and the entire organization constitutes the party's "machine," at the head of which may be a powerful leader who is practically the dictator of the party's affairs in the state. It is, of course, to the advantage of the machine that the voters stay away from the primaries. This leaves the selection of the candidates and the framing of the platform in the hands of the managers. But every effort is made by the machine to get the voters out on election day. On this occasion they are exhorted to show their loyalty to the party by coming out in support of the candidates. At the polls the voters often merely confirm the choice of the party machine.

**158. Direct Primaries.**—The system of machine government described in the preceding section has not worked altogether badly. Formerly there was much corruption, but the rising standard of political morality and the enactment of the numerous "corrupt practice acts" have produced a marked change for the better. Moreover, the party leaders know that their candidates must be at least moderately fit or they will be defeated at the polls. As a rule the member of a party will vote the party ticket whatever be his personal views as to the fitness of the candidate, but there are many exceptions. Elections are often determined by the independent voter, either within or without the party. There are many voters who are not definitely connected with any party, and many party men who will "bolt" the party if the nominees are not acceptable.

But machine government is not democracy but oligarchy,

and in recent years an attempt has been made to restore democratic government by putting the nominations as well as the elections in the hands of the people. In many states the convention mode of nominating candidates has been abolished and nomination by the *direct primary* substituted. A direct primary is a preliminary election in which the party's candidates are chosen by the direct vote of the members of the party. Primaries are conducted in substantially the same manner as a regular election.

The statutes relating to direct primaries are voluminous and vary considerably in the different states. In some states the primary is open only to voters of the party conducting it. A Democrat is not permitted to vote in a Republican primary, and *vice versa*. This is called a *closed primary*. The main object of the restriction is to keep members of the opposite party from preventing the nomination of the strongest candidates of the party conducting the primary. This they might do by voting for a weak candidate who could be defeated in the regular election. Another type is the *open primary*, which is open to all without any declaration of party affiliation, the primary for all the parties being held on the same day.

There must, of course, be candidates in the primary election as well as in the regular election. The statutes prescribe the mode of becoming a candidate in the primary. The usual mode is by filling a petition with a certain number of signatures indorsing the applicant's candidacy, or by the payment of a fee, or by doing both. In states in which there is a single dominant party, as in Virginia and other Southern states, the result of the primary of the dominant party determines the result of the regular election, for nomination is equivalent to election where the state is controlled by a single party.

It is claimed by advocates of the direct primary that it makes elections more democratic and largely overcomes the danger of machine rule. By putting nominations as well as elections in the hands of the people it is supposed that the voters are enabled in fact to choose their own representatives instead of

merely choosing between nominees selected by the party managers. On the other hand, the new plan casts a greater burden upon the people, for they must attend two elections instead of one. At the first election they choose their candidate and at the second they vote for him as against the opposing candidate. Also there is reason to believe that the selection of candidates to be voted for at the primary may fall almost as much into the hands of the politicians as did the selection of nominees under the former plan. The most that can be said of the system of direct primaries is that it is on trial and that good may come out of the experiment.

**159. Ballots and Voting.**—After the candidates are chosen the next step is the election. All elections are held by ballot, except in a few states in which voting-machines are used to some extent. Until a few years ago the ballots were printed and supplied to voters by the several party organizations or by the candidates, and were prepared by, or perhaps for, the voter before he went to the polls, and were deposited in public view so that it was usually possible to tell how the elector voted. Under this system bribery and intimidation were easy and common. A great reform was accomplished by the introduction of the so-called Australian ballot system, which was first used in Australasia. This system was introduced into the United States by Kentucky and Massachusetts in 1888, and is now practically universal. The main features of the system are that the ballots are prepared and furnished by the public authorities and that the voting is secret.

The form of ballots and other details of procedure vary in the different states. In one form the names of all the candidates for each office are arranged in alphabetical order, with or without party designations, under the title of the office to be filled. In voting the voter either marks a cross opposite the name of each candidate he wishes to vote for, or strikes out the names of the other candidates, as the state law may provide. This form of ballot requires the voter to give individual attention to each candidate and makes the voting of the entire

party ticket—the “straight ticket”—less probable than in the next form. In the second of the more common forms all the candidates of each party are grouped together in a separate column, the columns being placed side by side so that all the candidates for the same office are on the same horizontal line.



INTERIOR OF A POLLING-PLACE.

The men seated at the table on the left are clerks of the Board of Registry; those standing behind them are watchers. The ballot-booths are in the background. On the table on the right are the ballot-boxes, one for the actual votes and the other for the stubs which carry the number of the ballots. The voter begins by registering at the forward end of the table. At the farther end he receives a ballot and passes into one of the booths, marks it and hands it to the clerk, who drops it into the ballot-box.

The party name or symbol is at the head of each column. If the voter wishes to vote the straight party ticket, he simply makes one cross in the circle or other space provided at the top of the column. If he wishes to “scratch,” or vote for only some of his party’s candidates, or vote a “split” ticket, that is, vote for some candidates of both parties, he must mark or strike out names so as to indicate which candidates he votes for.

The mode of voting is substantially as follows: the voter en-

ters the polling-place, in which no one is allowed but the officers of the election and the authorized watchers of the political parties and those about to vote. He applies to an officer for an official ballot, giving his name, if he is unknown to the officers. If he is found on the registration lists and entitled to vote, he is given a ballot, whereupon he retires alone into a small voting-booth and there marks and folds his ballot. He then takes it to the ballot-box, into which it is deposited by the voter or by the officer, as the law may provide. The voting is thus entirely secret, no one but the voter himself knowing how he voted. Sometimes voting-machines are used, the voter registering his vote by pushing a knob or knobs, but their use is not general.

**160. Municipal Politics and Elections.**—The mayor and council of a municipal corporation, or the commissioners where the commission form of government is employed, are elected by the people of the corporation. Sometimes other officers, such as the heads of departments, are also elected, but as a rule such officers are appointed by the mayor or by the council or commission as the case may be. Municipal elections are usually held at different times from state and national elections, which is a wise arrangement both because the number of candidates to be voted for at one time is less, so that it is made easier for the voter to cast an intelligent ballot, and also because a confusion of issues is thus avoided.

There is usually no necessary connection between a state or national election and a local municipal election involving only local candidates and issues. State and national elections are conducted on strict party lines, but party affiliations should have no significance in municipal elections. It is, or should be, a matter of no consequence whatever whether the mayor or a member of the city council is a Democrat or a Republican, for the issues which divide the great national parties cut no figure in municipal affairs. In municipal elections, therefore, party designations are commonly disregarded and the candidates run on local issues or on their personal qualifications. Of course, however, the party system so far as state and national politics

is concerned, is maintained in the cities, and the smaller units for party organization are the city wards and precincts.

### Questions

1. Can democracy be successful if the people take no interest in public affairs and will not vote? Is the government democratic when the people vote but do not know anything about the candidates or the questions voted for?
2. From which sovereignty, state or United States, is the right to vote derived? Does the federal Constitution confer the right to vote? How are the times of holding elections fixed? Why should local elections be held at different times from state and national elections?
3. Is the right to vote a right belonging to every citizen? Did the granting of the right to vote to women make the government more democratic? What are the requirements for the suffrage in your state?
4. For what purposes are elections held? What is the essence of democracy? Ought complicated questions to be submitted to the people at the polls, for example, whether a particular tax law should be enacted? Could the voters vote intelligently on the question whether a new school building should be built in the town?
5. What are the two steps in the selection of public officers? Does it make much difference to the average citizen which candidate is elected if both are good men for the office? Are men fit for office always good politicians, so that they can get themselves elected?
6. What are the three modes of nominating officers? What is a caucus or primary? Who calls the primary meeting together? What is done at a primary meeting? Why is it important that the voters attend the primary? Do most voters attend? Do the party managers take pains to get the voters out to the primary? Do they try to get them out to the election? What is the result if the voters do not attend the primary?
7. What is the direct primary? What is its object? For what is it a substitute? Who may vote at the primary? Does the primary increase or diminish the burden on the voter?
8. Who supplies the ballots to the voter at an election? What is the Australian ballot system and how does it differ from the old system? What is voting a "straight" ticket? a "scratched" ticket? a "split" ticket?
9. Why are party affiliations of less importance in municipal elections than in state or national elections?

## CHAPTER XVIII

### POLITICAL PARTIES

**161. Political Parties in General.**—A political party is an organization of persons with common aims and policies combined for the purpose of controlling and carrying on the government in accordance with their aims and policies. In practical politics the main business of a political party is to win elections. In this way they gain or retain control of the government. The chief incentive of the party worker is usually the hope of securing public office or some other material reward.

The federal Constitution makes no provision for political parties, but the party system is one of the most necessary and characteristic features of our scheme of government. The Constitution provides the machinery of government and the party supplies the vital force that keeps the machinery in motion. A scheme of government does not run itself; there must be men to operate it. Thousands of persons are required to carry on the work of the state and federal governments, and only through organization can these persons be chosen and their activities harmoniously directed. Such organization is supplied by the political party.

Political parties are a necessity in a democracy. Not only is it natural for individuals to group themselves according to common beliefs and aims, but without such grouping effective action is usually impossible. One person acting alone can accomplish little in public affairs, but a large enough combination of like-minded individuals may control the government. Unless popular government is to degenerate into an oligarchy there must be at least two strong political parties, each holding the other in check. The best results are secured when the parties

are about equal in strength. Then the party in control is put on its good behavior by the knowledge that unless its administration is satisfactory it will be defeated at the next election.

As a rule it is only as a member of a political party that an individual voter can exert any substantial influence in public affairs, and the support of a political party is absolutely essential to secure election to most public offices. Usually voters connect themselves with one or the other of the leading parties, and most members of a party vote the straight party ticket regardless of their personal convictions. But there are many independent voters who either belong regularly to no party, or if party men do not always vote the straight party ticket. Sometimes there are enough of these independent voters to turn an election one way or the other. Now and then dissatisfaction with the party's ticket or policies may cause a large defection or "bolt" of its members, or even split the party, and lead to its defeat. Such a split in the Democratic party in 1860 made possible the election of Lincoln, and a similar split in the Republican party in 1912 resulted in the election of Woodrow Wilson. The existence of a strong independent vote undoubtedly exerts a wholesome influence on politics, for the necessity of bidding for the favor of the independents raises the standards of the opposing parties.

**162. Functions of a Political Party.**—The main functions of a political party are to formulate the party platform, nominate candidates for public office, educate, organize, and bring out the voters in support of the party's platform and candidates, and, if in power, to run the government in accordance with the policies of the party. In this country the political party plays another important part in the practical administration of government by serving as a unifying agency to secure the harmonious working together of the several departments of the government. The separation of the government into three co-ordinate branches may be useful in preventing a dangerous concentration of power, but it does not make for energy and efficiency of administration. The legislature and the executive

may work at cross-purposes; also the national, state, and local governments may not work in harmony with each other.

All these possibly conflicting forces may be brought into harmonious action by the influence of the dominant political party. The party organization not only covers the country at large but extends down to the smallest political subdivision of the states, so that the party has immense power over all the political activities of the country, whether national, state, or local. When the various branches of the government are all controlled by the same party, party government is complete, and the various disconnected agencies of government are brought into unity of action. Of course when neither party is dominant, the President, for example, being of one party and a majority in Congress being of the other party, there may be a deadlock, as sometimes happens. This is a weakness in the system, but fortunately the two leading parties agree in most essential matters and such deadlocks rarely occur.

### 163. Formation and Continuance of Political Parties.—

Political parties are formed in the beginning on some outstanding issue or issues involving questions of public policy. Upon the settlement or passing of these issues the parties die unless some other issues are taken up. The raising of any important issue will naturally result in the grouping of the voters on one side or the other of the question involved, but this need not necessarily bring about the formation of a political party. Where the issue is temporary or disposed of at a single election, the grouping of voters will disappear with the disposition of the issue itself. This is especially true of local issues; in fact, a political party cannot be organized on a local issue, for it must be composed of a large number of voters. Only questions of national interest have justified the attempt to organize a political party. The voters of a state, without regard to party, may divide on the question of a proposed amendment to the state constitution, and the voters of a county or city may divide on the question of an issue of bonds for road improvements or public schools, but political parties cannot be formed on such

minor or local questions. It is only where the issues are of national importance and are permanent or continually coming up that they can serve as the basis for political parties.

After a political party has once become thoroughly established and has developed party traditions and loyalty, its platform and doctrines are not very important. The party name and organization will usually be strong enough to carry the party from one issue to another. This is the case with the two great historic American parties, the Democratic and the Republican parties. Their organization and traditions and the importance of securing or retaining the spoils of victory are enough to keep them alive. While each party has in the main been characterized by the same general spirit throughout its history, their specific doctrines have frequently changed. Usually the party out of power stands for the strict construction of the Constitution and for economy in government, and denounces the party in power for its disregard of these principles; but when they themselves are in power they act much the same as the party they have displaced. In short, the fundamental principle and policy of the two leading parties is to get and retain the possession of the government. They want the public offices. Nothing else counts for much and party platforms are framed, and candidates are chosen with this one end in view. The main thing is to win the election; the real contest is between the "ins" and the "outs."

It might be inferred from the above that it makes little difference whether one belongs to a party or not, or indeed whether one even takes the trouble to vote. If the parties are about the same, why vote to put or keep one in office rather than the other? The main reason is that it is chiefly through fear of defeat at the polls that the party in power is kept responsive to the will of the people and reasonably efficient in running the government. A change of administration is sometimes a good thing. If a party in power has done badly it ought to be turned out, even though the other party may perhaps do no better. There is always the chance that a new political broom will

sweep cleaner than the old, and, besides, a party that has abused its trust ought to be punished. At any rate this is the only recourse the people have.

**164. Political Parties in the United States.**—Political divisions began in the United States with the establishment of the government, but the party system as a factor in national politics dates from the presidential election of 1796, upon the retirement of Washington from the Presidency. The two parties were the Federalists and the Republicans. The Federalists favored a strong central government and held that the Constitution should be construed liberally in favor of the federal government. John Adams, Alexander Hamilton, and John Marshall were the most prominent Federalists. The Republican party, also known as Democrats, stood for states' rights and strict construction. Thomas Jefferson, the great prophet of democracy, was the founder and leader of this party. He was the great champion of personal liberty and individual rights. The present Democratic party is regarded as the same as that founded by Jefferson, and has had a continuous existence from the beginning. Under its second great leader, Andrew Jackson, the party became known as the Democratic party. The Federalists controlled the government only during the administration of John Adams (1797–1801) and went out of existence about the close of the War of 1812. John Marshall, however, as Chief Justice of the Supreme Court, powerfully maintained the principles of nationalism for over thirty years. The Democratic party was the dominant party almost continuously from the election of Jefferson in 1800 until the Civil War, winning every presidential election but two. The short-lived Whig party elected William Henry Harrison in 1840 and Zachary Taylor in 1848. There were also several other minor parties during this period. The present Republican party was founded in 1854 and elected Abraham Lincoln to the Presidency in 1860.

Since the Civil War several new political parties have been formed; namely, the Prohibition party (1869), the Greenback party (1876), the Populist party (1891), the Socialist party

(1900), and the Progressive party (1912), but none of them ever attained political power comparable to that of the two major parties. The great political parties have been the Democratic and Republican parties, which are fairly evenly matched in strength, the Republicans being somewhat stronger. The Republicans have elected all the Presidents since 1856 except two, Grover Cleveland and Woodrow Wilson, both of whom were elected twice by the Democrats.

There has been no one permanent issue separating the Republicans from the Democrats. Party organization and traditions have been the main forces in keeping them apart. The Republican party was founded in 1854 on two principles: resistance to the extension of slavery and the maintenance of the Union. Since the war it has generally advocated a high tariff for the protection of American industries, though the tariff has only occasionally been an issue in national elections. In 1896 and 1900 the money question was the main issue between the two parties. The Democrats advocated the free coinage of silver and the Republicans generally stood for the gold standard. At present there is little difference in the policies of the two parties.

**165. Party Organization and Machinery.**—The organization of a political party is quite complicated. It consists of two main elements, the managing committees and the party meetings or conventions. The committees are permanent bodies and are the real power in party management. The party meetings or conventions are temporary bodies called for the purpose of nominating candidates for office or of choosing delegates to larger conventions. A nominating convention may also adopt resolutions or platforms setting forth the party's sentiments on political issues.

Each party has a national committee, a state committee, and numerous local committees in the various political subdivisions of the state. The national committee consists of one member from each state and territory, who are chosen by the respective state and territorial delegations at the national

convention. This committee is the managing agency of the party at large.

The state committee is composed of representatives from the main political divisions of the state, such as counties or congressional districts. The members of the state committee are usually chosen by the state party convention.

Subordinate to the state committee are the various county and district committees, and below these the town, precinct, or ward committees. The committee of the smallest unit may be a single person. The committees of the smaller units come into personal contact with the individual voters, and are thus enabled not only to see that the voters come out on election day in support of the party's candidates, but also to keep the organization higher up accurately informed as to local political conditions. The committeemen for the various political areas are chosen by party meetings or conventions held therein. Besides the national, state, and local committees each party maintains a committee in Congress, composed of members of that body, who look after the interests of the party at Washington.

**166. National Conventions.**—The national convention of each of the political parties meets once every four years to nominate candidates for the Presidency and Vice-Presidency and to formulate the party platforms. The time and place of meeting are fixed by the national committee of the party. The delegates are selected by the party in each state, there being some differences in the mode and principle of selection by the different parties. The total number of delegates in the conventions of the Democratic and Republican parties exceeds 1,000. The general principle of the two parties is that each state shall have as many delegates as it has representatives and senators in Congress. Delegates are received also from the territories and possessions and the District of Columbia.

The conventions are held early in the summer preceding the election, a large city being always selected as the place of meeting. The convention meets in a large auditorium accom-

modating the delegates and thousands of spectators. The convention is first temporarily organized under the direction of the national committee, then a permanent chairman and other officers are elected and the convention is ready for business. The party platform has usually been adopted first and the candidates then chosen, but in the Democratic convention of 1912 this order was reversed. In the Democratic convention a two-thirds' vote is necessary to nominate, but in the Republican convention a majority is sufficient. The Democratic rule has sometimes prevented the nomination of a candidate who upon the earlier balloting received a majority of the votes.

In the Republican convention the individual members of the state delegation may vote as they please, but in the Democratic convention the "unit rule" is adopted, the entire state delegation voting as a unit, the majority of the delegation having the right to determine how the vote of the state shall be cast. Sometimes where the right of a delegate to a seat in the convention is contested, each of two contestants is allowed a half vote, which explains how this fractional vote sometimes appears in the results of balloting.

The big business of the convention is the nomination of the candidate for the Presidency. When this is accomplished the candidate for the Vice-Presidency is then chosen, but little attention is paid to this, although a number of Vice-Presidents have succeeded to the Presidency, and the candidate for this office should therefore clearly be of presidential caliber. Usually the second place on the ticket is given to a minor political figure or to a "favorite son" of some doubtful state. When the business of the convention is over it adjourns *sine die*. The candidates are soon afterward formally notified of their nominations, and their speeches of acceptance often play an important part in the campaign.

**167. Party Finances.**—Politics is expensive. It costs a great deal of money to keep up a political organization and especially to run a political campaign. Exact figures are not obtainable, but it has been estimated that party organization

costs more than any one of the regular departments of government. This does not mean that the money is spent corruptly, as in buying votes; indeed, it is probable that a very small part of the large sums spent in political campaigns is spent in bribery or in any other unlawful way. The legitimate expenses of a campaign on a large scale, such as a presidential campaign, or of even the lesser campaigns, such as for the governorship of a state or for a senatorship, amount to large sums. The cost of presidential campaigns runs usually into the millions.

Campaign funds are collected by the executive officers and the finance subcommittees of the party committees. The principal sources of such funds are contributions from party supporters and from candidates. In former times more than at present money was also sometimes collected from corporations and individuals in return for special favors.

The corrupt use of money in elections has in recent years led to the enactment of numerous statutes intended to prevent this evil. In many, if not most, of the states statutes have been passed, sometimes called "corrupt practice acts," regulating the use of money in elections. The use of money to influence voters or for anything else than for certain enumerated legitimate expenses is prohibited; candidates are required to file with a prescribed officer a sworn statement of their campaign expenses, and in some states are limited to the expenditure of not more than a stated sum; contributions from corporations are sometimes prohibited; and political committees are required to keep and file a detailed account of campaign receipts and disbursements. Congress has also passed similar statutes applying to national elections.

### Questions

1. What is a political party? Does the federal Constitution mention political parties? Why do we have political parties and why should a voter belong to or vote with a party?
2. What does a political party do? How does a political party usually start? After a party gets started what keeps it alive? What is the main object of the average politician?

3. Is a change of parties now and then a good thing? If the party in power has done badly, but the opposite party may possibly do no better, how should you vote?

4. Name the two leading parties in this country and tell when each one was founded. To what party did Thomas Jefferson belong? Abraham Lincoln? Grover Cleveland?

5. What are the various committees of a political party? How is the national committee made up and what does it do? What is the national convention and what does it do?

6. Where does the money come from to finance a political campaign, and what are some of the legitimate expenses of a campaign? What provision is made by statute to prevent the corrupt use of money in elections?

## CHAPTER XIX

### POPULAR CONTROL IN GOVERNMENT

168. **The Progress of Democracy.**—American democracy was founded upon the principle of *representation*, that is, that the people should rule not directly but through representatives chosen by them. Until quite recently the people have directly played little part in the establishment and maintenance of the American constitutional system. The federal Constitution was neither framed nor ratified by the people, and of the early state constitutions only that of Massachusetts was submitted to the people for ratification. So far as the federal government is concerned, the representative principle remains in full operation, the only change in the original plan being that senators are now elected by the people instead of by the state legislatures. In general, however, there has been a great increase in the extent to which the people take part in the affairs of government.

This increase has been along several distinct lines. One has been the extension of the suffrage. A century ago comparatively few of the people had the right to vote. Now every adult citizen, male or female, may vote, who can measure up to the easy requirements of the suffrage laws. Another development has been the submission of state constitutions and constitutional amendments to the vote of the people. This has been the rule for a long time; very rarely in the last half-century has a state constitution been declared adopted without being first approved by popular vote. Another extension of the people's power has grown out of the great increase in the number of elective offices. Originally very few officers were elected by the people; now this mode of choice is probably the rule. This change is supposed to increase the responsibility of

public officers to the people and to make the government more democratic. The adoption of the direct primary mode of making nominations was intended to have a similar effect.

The most radical change in the machinery of government has been the adoption in some states of the plan of direct legislation by the people, that is, the making of laws by the people themselves instead of having them made by the legislatures. This is the substitution of *direct* democracy for *representative* democracy, and involves the rejection of the principle of representation which was the foundation of our constitutional system as originally established. This change has taken place in the past twenty years, and there are already signs that it is falling into disfavor.

These changes are some of the marks of the progress of democracy in the United States. The fact that changes in the machinery of government are made from time to time, in the effort to keep the government under the control of the people, emphasizes the fact that democratic government itself is still a good deal of an experiment. It can succeed only where the people are capable of self-government, and not then unless they go about it in the right way. But it should be remembered that democracy is not a matter of *form* but of *substance*. If the people *in fact* rule, it does not matter by what *method* they rule. Democracy does not require that the people should run the government themselves. It is enough if they set up the government and hold the public officers accountable for how they run it. These matters will be more fully explained in this chapter.

**169. The Multiplication of Elective Offices.**—The great increase in recent years of the number of things the government does has made necessary a corresponding increase in the number of public officers. Most of the more important officers are elected by the people. It was not so under the early state constitutions. Under the Virginia constitution of 1776 only members of the legislature were elected by the people. The governor, judges, secretary of the commonwealth, and at-

torney-general were chosen by the legislature, and the minor state officers—justices of the peace, sheriffs, coroners, and constables—were appointed. Now there are not only many more officers than formerly, but there has been a tendency to make more and more of them elective. This is supposed to make the government more democratic.

But does it really have this effect? This depends upon whether the election constitutes an intelligent choice by the voters or is merely a ratification of a choice made by the party managers. An unintelligent choice is really no choice. But a voter cannot cast an intelligent vote for a candidate unless he knows both the candidate and what kind of a man the office calls for. If the number of candidates to be voted for is so great that the voters cannot even know who they are, or if the qualifications for the office are such that the average voter can form no opinion of the fitness of the candidate for the office, an intelligent choice is impossible.

In many elections the voter casts his ballot without the slightest knowledge of the fitness of the candidate for whom he is voting. Such must have been the case in an election in Oregon in 1912 when the ballot contained the names of 176 candidates, or in a municipal election in Chicago in 1906, when the ballot measured 18½ by 26 inches and contained the names of 334 candidates for many different offices. If the voter in the latter election gave ten seconds to the consideration of each name, it took him about one hour to mark his ballot. But such consideration was impossible and useless, for very few of the candidates could have been known to the voter. A ballot cast in such a case is a vote in the dark, and such an election is a mockery of democracy.

The effect of the multiplication of elective offices in municipal elections has been strikingly described by Woodrow Wilson as follows:

In the little borough of Princeton, where I live, I vote a ticket of some thirty names, I suppose. I never counted them, but there must

be quite that number. Now I am a slightly busy person, and I have never known anything about half the men I was voting for on the tickets that I voted. I attend diligently, so far as I have light, to my political duties in the borough of Princeton—and yet I have no personal knowledge of one-half of the persons I am voting for. I couldn't tell you even what business they are engaged in—and to say in such circumstances that I am taking part in the government of the borough of Princeton is an absurdity. I am not taking part in it at all. I am going through the motions that I am expected to go through by the persons who think that attending primaries and voting at the polls is performing your whole political duty. It is doing a respectable thing that I am not ashamed of, but it is not performing any political duty that is of any consequence. I don't count for any more in the government of the borough of Princeton than the veriest loafer and drunkard in the borough, and I do not know very much more about the men I am voting for than he does. He is busy about one thing and I am busy about others. We are preoccupied, and cannot attend to the government of the town.

**170. Invisible Government.**—The multiplication of elective offices in this country has undoubtedly to a great extent rendered the government undemocratic by putting the actual selection of public officers into the hands of a few self-appointed professional politicians who make up the tickets to be voted on by the people. The forms of democracy are preserved, but that is all. The people *elect* but they do not *select* their officers. They do not appoint or control the small group of party bosses who make the nominations, and as a rule they do not even know who they are. The real boss is probably not an office-holder, and has nothing to fear from the people. He and his associates, acting in secret, distribute the offices to their henchmen in return for their support of the machine. No one can hope to be elected unless he submits to the authority of the machine. Thus a small group of irresponsible and often unknown men, acting in the dark, possess themselves of the public treasury and the reins of government. This has been aptly called "invisible government." It is not democracy, but one of the worst forms of government, a secret oligarchy.

This kind of government has been almost universal in large

cities and to a considerable extent prevails even in the state governments. It is stated on the highest authority that one of the states was ruled for more than forty years by irresponsible political bosses, and the fact that some of these bosses were personally men of high character does not alter the fact that such a government is not democratic.

**171. Irresponsible Government.**—Democracy requires that the people shall be able to hold their public officers accountable for the way they perform their duties. This is possible only, (1) where the people are able to find out what the officer has done or is doing; (2) where the nature of the officer's duties is such that the people are able to judge whether he has performed them well or not.

These conditions are usually satisfied in the case of most local officers of towns and rural communities. The citizen can usually find out all he needs to know about them. But this is true of only the most important and conspicuous state and national officers. Too often the great number and inconspicuousness of such officers makes them, so to speak, invisible to the electorate. All such officers are practically irresponsible to the people, for the people cannot know whether they are performing their duties well or not.

For this reason such officers should not be elected by the people, but rather appointed by the legislature, or by the governor or some other officer able not only to judge of their qualifications for office but also to observe whether they have satisfactorily performed their duties. When elected by the people, they are often re-elected time and again without reference to their efficiency because the people know no better. Direct democracy is a failure in such cases.

**172. Direct Legislation—The Initiative and Referendum.**—About thirty years ago a conviction began to develop, especially in the far West, that the state legislatures had ceased to be truly representative of the people. They often failed to pass laws for which there was a popular demand, and were, or were supposed to be, much under the control of political

bosses and the representatives of the great corporations or other special interests. They were believed to be no longer responsive to the popular will. In so far as this was true, the legislature was, of course, not democratic. Undoubtedly there had been a marked decline in the general character of the members of the legislature and in the quality of legislation. For this there were two main reasons: the best men no longer, as formerly, were willing to serve in the legislature, and the rapid and great change in social, economic, and industrial conditions raised problems in law-making which were very hard to solve. Naturally much of the legislation was unsatisfactory.

The natural remedy for this state of things was to send the best possible men to the legislature to grapple with the situation. By making a legislative career attractive, good men might have been induced to serve, and ordinarily the people are able to pass intelligently upon the qualifications of a member of the legislature. About all that is required is that he shall be intelligent, honest, and industrious. A legislature composed of men of this sort will pass as good laws as it is possible to get. But this plan was not adopted. Despairing of their legislatures, the people of several of the states decided to take law-making largely into their own hands. They did not abolish the legislature, but undertook to dictate to them what laws should be passed. The state constitutions were amended so as to authorize this, two different methods being adopted for controlling legislation. One is the *initiative*, by which the people propose a law and either pass it themselves or require the legislature to pass it, and the other is the *referendum*, by which the people require a law passed by the legislature to be submitted to the people for approval before it shall go into effect. This is direct legislation by the people. The initiative and referendum have been called "progressive" measures, but, historically, the principle of direct legislation is reactionary. It is a return to pure democracy such as existed in the early days of Greece and Rome.

The initiative works as follows: Any person or group of per-

sons may draft a law, and, on presentation of a petition signed by a prescribed percentage of the voters, may require the submission of the proposed law either to the people themselves or to the legislature, as the state law may provide. The former, or direct form of initiative, dispenses with the legislature altogether; while the latter, or indirect form, uses the legislature as an intermediary, requiring the legislature either to pass the law or submit it to the people. The referendum works in a similar way: Where the referendum has been adopted, a law passed by the legislature goes into effect in due course after the expiration of a certain time unless in the meanwhile a referendum has been demanded. But any one may procure a referendum by presenting within the time limited a petition signed by a stated percentage of the voters, requiring the submission of the law to the people. When such a petition is presented to the proper officials, the operation of the law is suspended until an election has been held to determine whether or not the law shall take effect. As it is not hard to get signatures to almost any sort of a petition, this device puts it into the power of almost any one to hold up and perhaps defeat legislation. The percentage of voters required to sign an initiative or referendum petition varies in the several states, ranging from 5 per cent to 15 per cent.

The initiative and referendum have been used in Switzerland for a long time, and seem to work pretty well in the small cantons of that country. The referendum has been used in this country from the beginning to a considerable extent. Constitutions and constitutional amendments have usually been submitted to the people. The referendum has also been employed in connection with questions of administration or public policy, such as the location of county-seats, the division of a county, the issue of bonds for public improvements, the prohibition of the sale of liquor, etc. But the initiative and referendum as applied to ordinary legislation were first introduced in this country by South Dakota in 1898. One or both of these devices have been adopted in somewhat varying forms

in twenty or more states, but only in Oregon have they been used to any great extent.

**173. Is Direct Legislation Practicable?**—Experience with direct legislation has probably been too limited to justify a final conclusion as to whether it is worth while as an instrument of democracy. All the arguments seriously urged in support of the plan of legislation by the people come to this, that the legislatures are incompetent, craven, or dishonest. It is charged that they are indifferent to the will or needs of the people, but ready enough to act in favor of some corporation or other powerful interest. In so far as this is true, are not the people themselves to blame, since they elect the legislatures? The true remedy, as already stated, is to send the right sort of men to the legislature and give them a chance to pass good laws. At all events it is a surprising doctrine that a people who cannot choose good legislators can perform the far more difficult task of passing good laws. As a *means of controlling the legislature*, direct legislation is undoubtedly effective. The initiative forces the legislature to pass a law, and the referendum may prevent a law passed by the legislature from taking effect. But forcing or preventing legislation is not the same thing as securing good laws. As a *mode of actual lawmaking*, direct legislation is almost necessarily a failure.

The business of governing, and especially the making of law, is a hard job. It requires ability, experience, concentration, deliberation, and discussion. It is a matter for experts working under suitable conditions. It is generally easy to form an opinion as to what one wishes to accomplish by a law, but it is a far different matter to frame a law that will effect this purpose. A member of a legislature once said: "When I came to the legislature I introduced a bill to prohibit the manufacture of filled cheese. It would have done it all right, but it would have prevented the manufacture of all other kinds of cheese too." There is no use in trying to make a law unless one knows how. The people in the mass are not able either to frame good laws or to form an intelligent opinion as to whether or not a

proposed law will work well. They can and should decide broad general questions of policy, and then leave to the legislature the task of passing laws to carry these policies into effect.

The uselessness of the voter's voting on laws he knows nothing about has been recognized in the states which have adopted the initiative and referendum, and an attempt is made, by printed explanations and otherwise, to educate the voters as to the laws submitted, but this does not seem to meet the inherent difficulty of the case. In Oregon the law provides for an official "voters' pamphlet" of information. It is stated that "With the steady increase of the number of measures submitted, the size of the pamphlet has increased, until at the election of 1912 it contained 252 pages." After "wading through" the pamphlet issued in connection with the submission of thirty-eight proposed bills in another election, the editor of an Oregon paper declared that it was impossible for him to form an intelligent judgment on them, and that not 1 per cent of the voters would be able to cast an intelligent ballot. It has been claimed that one of the chief merits of direct legislation is the increased interest it creates among the people in public questions and the educational effect it has on the voter. Certainly it greatly increases the burden upon the voter, which was already one of the main causes of the undemocratic character of the government. Where the burden is too great the voter will let it alone.

**174. The Recall.**—Along with the initiative and referendum is commonly found the recall of elective officers. The details vary considerably in the different states, but the general plan is that whenever a certain percentage of the voters are dissatisfied with the conduct or character of an officer they may, on petition stating their objection to him, require an election to determine whether he shall remain in office. If the vote is unfavorable to the officer, he is retired; if in his favor, he remains in office.

The recall was first introduced in this country in the charter of Los Angeles, California, in 1903, and affected, of course,

only the officers of that city. In 1908 Oregon adopted the recall for state-wide purposes, and it has since been adopted in a number of other Western states. The percentage of voters required to force a recall election is higher than that required in case of the initiative or referendum, being in Oregon 25 per cent. The laws of the several states vary as to what officers are subject to recall. Judges are usually exempt, the independence growing out of certain tenure of office being especially important in the case of the judiciary. In a few states, however, judges also may be recalled.

The value of the recall is doubtful. There is certainly little necessity for it. Most elective officers are elected for comparatively short terms, and if unsatisfactory need not be re-elected. For serious delinquency they may always be removed by impeachment. Also it is hard to see how anything could be more calculated to destroy the independence of a public officer than the knowledge that his faithful and honest discharge of his duty may render him at any time subject to removal upon the demand of those dissatisfied with his course. Experience has not yet shown the usefulness of the recall, but has clearly proved its possibilities for evil. It may easily be made the instrument of personal spite or enmity. The personal enemies of an officer may use this means of "getting even" with him. In the few cases in which the recall has been used, municipal officers or other minor officers have usually been the subjects, but in 1921 the governor and other state officers of North Dakota were so removed.

175. **The Short Ballot.**—The main reason for increasing the number of officers to be elected by the people was to make the government more democratic by giving the people more direct control over it; but we have seen that it often had just the opposite effect and leads to the control of the government by the political managers, who in fact select the candidates. The failure of this plan is leading to the adoption of the *short ballot*, so called because it contains only a few names and is therefore short.

This is a return to the representative principle. The people vote for only a few officers, such as the members of the legislature, the governor, and a few other of the more important officers. All other officers are either chosen by the legislature or appointed by the governor or other high officer. The idea of the short ballot is to concentrate the attention of the voters upon the election of a few officers, give these power to choose the other officers, and then hold them responsible not only for their own conduct but also for the selection and conduct of their appointees. This is the plan of the federal government and at first was the plan of the state governments also. It is the only plan by which democratic government on a large scale has ever been really successful. The federal government is usually considered more successful than that of the states, and under the federal system the people vote only for presidential electors and members of Congress.

Experience has shown that the state and city governments are too complicated and require too much of the voter to work well. As Woodrow Wilson said: "Elaborate your government; place every officer upon his own dear little statute; make it necessary for him to be voted for; and you will not have democratic government. . . . The remedy is contained in one word: *simplification*. Simplify your processes, and you will begin to control; complicate them, and you will get farther and farther away from their control. Simplification! simplification! simplification! is the task that awaits us; to reduce the number of persons to be voted for to the absolute working minimum—knowing whom you have selected; knowing whom you have trusted; and having so few persons to watch that you can watch them." Likewise Theodore Roosevelt said: "I believe in the short ballot. You cannot get good service from the public servant if you cannot see him, and there is no more effective way of hiding him than by mixing him up with a multitude of others so that they are none of them important enough to catch the eye of the average workaday citizen. . . . You will get best service when you elect only a few men, and where each

man has his definite duties and responsibilities, and is obliged to work in the open, so that the people know who he is and what he is doing, and have the information that will enable them to hold him to account for his stewardship."

The short ballot has been put into operation in scores of cities, which have adopted the commission form of government, but the reform has not been introduced to any extent in the state governments, the tendency being rather toward making more and not fewer state officers elective.

**176. Public Opinion.**—In a democracy the people are the real sovereigns. The public officers are their servants in duty bound to carry out the will of the people. But the unorganized public has no will. The average citizen wants *good government*, but he cares little for details. He is not interested in particular measures or policies. Nevertheless, democracy is essentially government by public opinion, that is, *organized public opinion*. This is the real force behind the government. Whenever any considerable number of the electorate are led, through education and organization, to demand any particular legislation, they usually get what they want.

The unorganized majority has little power, but a highly organized and determined minority can put through almost any measure they go after. Some of our most important laws have been so forced through Congress or the state legislatures. Legislators and public officers care little for the opinions of unorganized individuals, however numerous, but to an insistent demand from an organized body of voters they almost always yield. It is by the force of organized public opinion, far more than by any such devices as the initiative, the referendum, or the recall, that the government is made responsible to the people. The question is, how may public opinion be developed, moulded, and organized?

The most important agency for developing and influencing public opinion is the press. It is by newspapers and other publications that the public is kept informed as to what is going on, and public opinion is formed and expressed. Without the press, democracy would be impossible. This is what makes

the freedom of the press so important. Crookedness and incompetence in public life cannot stand publicity. It was the exposures in the New York *Times* and the cartoons of Thomas Nast that caused the overthrow of the Tweed Ring in New York City in 1871.

Next to the press, societies and associations are most influential in moulding and organizing public opinion. It has been remarked that it is the capacity of the Anglo-Saxon race for organization and team work that makes it capable of self-government. Whenever an American wants to get anything done in his community, he almost instinctively proceeds to organize some committee, club, or association to put it through. Most important citizens belong to one or more permanent organizations which can influence public opinion in civic and political matters, and it is always easy to get up an association for some particular purpose. There are hundreds of organizations in this country seeking to direct public affairs in one matter or another. These organizations may be classified generally as follows:

1. Associations of persons engaged in trade, business, or industry. Practically all persons engaged in gainful occupations have their own associations, often with paid secretaries or other officers, and with their own periodicals. Thus there are associations of manufacturers, bankers, publishers, merchants, laborers, mechanics, employees, farmers, etc. By propaganda and pressure upon legislatures they work to secure legislation favorable to their own special interests, which frequently conflict with the interests of other occupations and of the public. These associations are often very influential. Concerted action by farmers and others secured the establishment by Congress of the parcel post service, which the public had long wanted but which had been withheld through the influence of the express companies. In 1916 a combination of railway employees, by threat of a nation-wide strike, secured the passage of the Adamson Law regulating wages and hours of labor.

2. Associations of professional men and women. The ac-

tivities of these associations are almost wholly in the interest of the public. Besides improving professional standards, they have secured the enactment of many valuable laws. Thus the American Bar Association has promoted much useful recent legislation, such as the uniform state laws relating to negotiable instruments and other commercial subjects; medical associations have advocated health laws; educators have secured the adoption of school laws, and so for the other professions.

3. Societies for the promotion of social and economic progress. Such are the many voluntary organizations for the promotion of laws relating to taxation, child labor, public health, good roads, conservation, temperance, Sunday observance, manufacture and sale of cigarettes, tipping, cruelty to animals, vivisection, etc. Since any one who has a hobby may get up an organization to promote it, there is no limit to the range of such organizations. One of the most influential is the Anti-Saloon League, which, with the help of kindred organizations, secured the enactment of many prohibition laws and the adoption of the Eighteenth Amendment to the Constitution.

4. Associations concerned with the improvement of the government itself. Such are the Short Ballot Organization, the Direct Legislation League, the Bureau of Municipal Research, the National Association for Constitutional Government, and others.\*

### Questions

1. What form of democratic government was established in this country after the Revolution? How do the voters control under this system? What is the present federal system? State some changes that have been made in this country with a view to making the government more democratic.

\* The literature relating to the comparatively new subjects dealt with in this chapter is already extensive. See chap. XXIII of Beard's "American Government and Politics," and chap. XXVII and XXIX of Young's "New American Government." See also Barnett, "Operation of the Initiative, Referendum, and Recall in Oregon," and "Short Ballot Principles," by Richard S. Childs, secretary of the National Short Ballot Organization.

2. What officers are elected by the people in the case of the federal government? What was the rule under the early state constitutions? Does the increase in the number of elective officers make the government more or less democratic? Suppose the number of officers to be voted for is so great that the voter does not know them, what does his vote amount to?

3. What is "invisible" government, and why is it so called? What conditions must be satisfied before a voter can vote intelligently for a public officer, or determine whether an officer has been efficient? Should a judge be elected by the people? a state engineer? the attorney-general?

4. What is "direct" legislation? Is the principle of direct legislation old or new? Describe the initiative; the referendum. Why have they been adopted in some states? Could the voters of a city vote intelligently on the question whether or not the city should construct its own water system? If they voted to build the system, could they intelligently elect an engineer to do the work, or decide as to the merits of an ordinance regulating the use of the water?

5. What is the recall and why has it been adopted in some states? What effect, if any, might the recall of judges have upon their decision of cases? Can the voters decide intelligently as to whether judges have correctly applied the law?

6. What is the "short ballot"? Would its use make the government more or less democratic? What did Mr. Wilson and Mr. Roosevelt say on this subject?

7. How can public opinion be made effective in controlling the government? Name some of the agencies used to develop and direct public opinion.

## **PART III**

### **PUBLIC PROBLEMS AND ACTIVITIES**

#### **CHAPTER XX**

##### **THE FUNCTIONS OF GOVERNMENT**

**177. The Objects of Government in General.**—The great objects of government are perhaps nowhere better stated than in the preamble of the federal Constitution, namely, “to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to the people.” How much the government will do to accomplish these objects will depend upon the state of society.

In a primitive community the functions of government are few and simple, but as civilization advances and society becomes more complex, the activities of government multiply. In a general way the great duty of government is to maintain and regulate society. The primary functions of the government are to protect the people from danger from without, to preserve order at home, and to establish justice between individuals. Unless these duties are performed, society cannot exist in peace and safety. Every government worthy of the name aims to do this much. Without protection by the government, neither life nor property would be secure. If every man had to protect himself, productive industry would languish and civilized society would be impossible.

But beyond the discharge of these essential functions of government, modern governments do many other things for the mere convenience, prosperity, and happiness of the people.

Conspicuous among these useful but not absolutely necessary functions of government may be mentioned: providing a currency and a postal service, public education, the promotion of health, the regulation of trade and industry, and the maintenance of public roads and public utilities, such as water-works, lighting systems, and the like. In all its activities the government is the co-operative agency of the people to do for them what they could not as individuals do for themselves.

178. **Theories as to the Province of Government.**—There has been much difference of opinion as to how far the government should take a hand in the affairs of the people. There are two leading theories on this subject, with various intermediate shades of opinion between them. These theories are the *Individualistic* and the *Socialistic* theories of the province of government.

*The Individualistic Theory*, in its extreme form, is that the sole function of the government is to protect the people from force and fraud, and that when this is done the individual should be let alone to manage his own affairs. This is the doctrine of *laissez-faire*, or "letting alone." It is contained in the maxim that that government is best which governs least. In its extreme form the Individualistic theory would not admit of the coinage of money by the government, or the establishment of the postal service, or the maintenance of almshouses, or the doing of anything whatever except for the *protection* of the people. It is hardly necessary to say that this theory in its extreme form has never been applied in practice. However, the general theory of *laissez-faire* has been held and applied in this country from the beginning, though with less force in recent years.

*The Socialistic Theory* is that the government should do almost everything relating to the material wants of the people. The term *socialism* is used indefinitely in common speech. To some a socialist is the same as an anarchist or bomb-thrower. Some socialists throw bombs, but a socialist is a very different person from an anarchist. An anarchist professes to believe in

no government at all, but a socialist advocates a very extreme and highly centralized form of government. Anarchists and socialists agree only in that both are opposed to the present system.

Socialism is a theory or programme for the nationalization of productive industry by the substitution of state ownership and control of natural resources and all the means and processes of production for private ownership and management. Production and distribution would be entirely in the hands of the state, which would run all factories, mines, railroads, farms, etc., and distribute the products to the citizens according to their individual shares as determined by the state. The aim of the socialist is to abolish individualism in industry, and the present competitive and capitalistic system. Individuals would still be permitted to own the things they actually use, but all means of production would be owned and all industries operated by the state. No such scheme has ever been put into operation, and socialists do not agree among themselves as to some of the most important details of the plan. Socialists have been active in politics, and the Socialist party has been very strong in Europe, especially in Germany, and has had some influence in the United States.

But while socialism as a programme seems impossible of realization in this country, the principle of collectivism, or co-operation, is being applied on a rapidly increasing scale. Sometimes it takes the form of combined effort by voluntary associations and sometimes the government is the collective agency employed.

**179. Early Individualism in the United States.**—At first the part taken by the government in the every-day life of the people was small. The federal government took care of foreign relations and provided for the common defense, and to a slight extent regulated foreign and interstate commerce by water, and also coined money and supplied a postal service. The states maintained law and order within their borders and defined and secured to the individual the usual rights of property

and contract, and then left him to pursue happiness and prosperity in his own way with little interference and almost no help from the state.

Both the spirit of the times and the simple living conditions of those days made for individualism. Families and communities were largely able to take care of themselves. The people lived mostly on farms and easily supplied nearly all of their simple wants from their own resources. They built their own houses from materials found close at hand; they raised their own food; they made their own clothes from their own wool and linen, which they spun and wove themselves; they dipped their own candles; they cut their own fire-wood; the local water-mill ground their corn and wheat for a share of the grain, and at the local forge were made their nails and most of their simple tools and farming implements. In some sections the small amount of iron used was mined and smelted in the neighborhood. In the country the people supplied themselves with almost everything they needed except money, and they had little use for money except to pay their small taxes.

Town life was about as simple. There were no large cities, and industrial and commercial establishments were on a small scale. Corporations were practically unknown. Business and manufacturing were carried on in small stores and shops, in which the proprietor often worked side by side with his employee. Transportation on land was by stage-coach, horse-back, or private conveyance, and on water in boats, barges, and small sailing-vessels. The roads were wretched and entirely in charge of the local authorities. There were no state or national highways.

Under these conditions business and industry practically regulated themselves. The law of supply and demand fixed the prices of commodities and the wages of labor. Individuals stood on substantially equal terms and could make their own bargains. In the absence of great cities and factories, living and working conditions were generally safe and healthful. By revolution the people had won political liberty, and under the

social, economic, and industrial conditions of the times they were still economically free. Altogether, there was little for the government to do but to protect the individual in what he could do and get for himself.

**180. Change in Social, Economic, and Industrial Conditions.**—We are now living, as it were, in a different world. The political revolutions of the eighteenth century did not bring about more sweeping changes in governmental systems than the changes produced in civilization itself by the astonishing developments of science and the mechanical arts in the past hundred and fifty years. The invention of the steam-engine and labor-saving machinery has revolutionized transportation, and the development of the corporation and modern financial methods has done the same for business. This is the age of Power. Until about a century and a half ago there had been practically no advance in the application of natural forces to industry since the time of the ancient Egyptians. The work of the world was still done by men and animals with a little help from windmills and water-wheels.

The great change began with the invention of the steam-engine by James Watt about the time of the American Revolution. Now steam, electricity, and gasolene are doing a great part of the world's work. Manufacture has been transferred from the home and the small shop to the factory. The railroad, the steamship, and the telegraph and telephone have superseded the crude agencies of transportation and communication of a century ago and brought communities and nations close together.

Under these modern conditions social and industrial individualism no longer exists. Production and transportation are now mostly in the hands of corporations operating on a large scale. The former personal contact between employer and employee has almost disappeared. The president of a great corporation is a stranger to its hundreds or thousands of employees. The employee is no longer a personality, but only a unit in a labor group or union. Individuals do not deal with

individuals, but capital is pitted against labor. Industrial warfare, with destructive strikes and lockouts, has often prostrated business and caused wide-spread loss and suffering.

Certain lines of business and production have been largely monopolized by small groups of capitalists, who have acquired control by buying out competitors or destroying them by ruinous competition. To these groups the public must pay tribute to obtain the necessities of life. Opposed to combinations of capital have arisen the great labor unions. Neither capital nor labor shows much concern for the consuming public, which has been ground, as it were, between the upper and nether millstones, for in the end the public pays most of the cost of industrial warfare. Again, the rise of great cities and the attendant congestion of population have made living conditions hard and unhealthful for the poor, and the raising of the standards of living has made living more costly for all. In mines and factories long hours and unsafe and insanitary working conditions have proved destructive to the health and lives of workers.

**181. Dependence of the Individual upon the Community.**—Along with other changes has come a condition of individual helplessness. The individual can no longer provide for his own wants, but is compelled to depend upon the community at large for aid in supplying his needs. Everywhere the people are obliged to depend upon each other. More than half of the people of the United States live in cities and towns and are dependent for food, clothing, fuel, and most of the necessities of life upon the products of distant places. These are brought from the various places of production or manufacture to the consumer, who has no control over and only a hazy knowledge of the many different agencies by which his wants are supplied.

In almost everything the individual living in the city is to some extent dependent upon some one else. He cannot spend a single day in comfort without receiving the benefit of the services of many persons scattered throughout the country. Discomfort or disaster may come to him if these fail to

do their part. A breakdown in the municipal water system, or lighting plant, or telephone system, may cause great inconvenience; a strike at the coal mines may paralyze industry; a tie-up of the transportation system may bring ruin and starvation; the failure of the public authorities to inspect the milk or the food supply, and to enforce sanitary regulations, may cause pestilence and death.

Those who live in the country are only in a less degree dependent than those who live in towns. Also community is dependent upon community. Only by combination and co-operation can this condition of individual helplessness be met. The organization in which all the people of the state combine their strength is the government. The government alone is strong enough to cope with and control the conditions of modern economic and industrial life, and secure to the individual the liberty and well-being which in simpler times he could secure for himself. This part of this book will be devoted to a further examination of these problems and some account of how they are being met.

**182. Government Regulation of Individual Conduct.**—This condition has another side. The dependence of the individual upon the community justifies and requires that the community should have power to control to some extent at least the individual's own conduct. It is not always easy to decide how far the government should undertake to regulate the conduct of individuals and especially their private life. Certainly every member of a community should be required so to conduct himself as not to injure any one else, and also to perform his positive duties toward society, such as paying taxes, serving on juries, rendering military service, and the like.

But every regulation by the public of individual conduct should be with a view to the interest of the public and not for the personal good of the individual. Personal conduct should be the subject of community action only when it affects the public. Insane persons, minors, and other persons not able to take care of themselves, may properly become the objects of

community care, but not adults in full possession of their faculties. For the state to require a grown man, for example, to learn to read, or to take exercise for his health's sake, or to save his money, would be highly tyrannical, though doing these things might be very beneficial to him. Likewise prohibiting him to do things that he wants to do just because the public opinion of the moment pronounces these things wrong, or because he may injure himself in doing them, is equally tyrannical, where his doing of these things cannot injure others. In applying this principle it is sometimes hard to tell when individual conduct will or will not affect others.

On this subject one of the most profound of modern thinkers says:\*

"Whatever theory we adopt respecting the foundation of our social union, and under whatever political institutions we live, there is a circlé around every individual human being, which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep; there is a part of the life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively. That there is, or ought to be, some space in human existence thus entrenched around, and sacred from authoritative intrusion, no one who professes the smallest regard to human freedom or dignity will call in question; the point to be determined is, where the limit should be placed, how large a province of human life this reserved territory should include. I apprehend that it ought to include all that part which concerns only the life, whether inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example." The disregard of this principle by the state in regulating personal conduct would be an abridgment or denial of personal liberty. The guaranties found in the state and national constitutions are intended to prevent tyranny of this sort.

\* J. S. Mill, "Principles of Political Economy," II, p. 560.

**183. May the Government Do Too Much?**—Thomas Jefferson would probably be astonished and even alarmed if he could suddenly appear in our midst and see to what extent the government is regulating the affairs and ministering to the wants of the people. If that people are best governed who are least governed, the people of this country must be among the worst governed peoples in the world, for what government does more for the people than the government of this country? But the end is not yet. The people are always calling for more. If anything goes wrong, some one wants to pass a law about it immediately; if there is destitution or suffering, government help is called for; if our neighbor does not behave himself to suit us, we demand that the authorities take him in hand.

Most fortunate are the people of this country in having a strong and helpful government, and the wide-spread and growing spirit of mutual helpfulness and community service is something to be thankful for, but there must be some limits to community action, some things which the individual should do for himself. The greatness of this country is mainly due to the achievements of self-reliant individuals, men and women who feared neither work nor hardship, who never asked that the government take care of them, but only that they be given a chance to take care of themselves. The community should do whatever requires community action, and the higher the civilization the more this will be, but whenever the community goes much beyond this, and does for the individual what he can and ought to do for himself, it does him harm and not good, for it weakens his self-confidence, which, says Schiller, "has always been the parent of great actions." Just as too much charity makes paupers, too much paternalism in government may make weaklings. Lord Bryce has recently called our attention to the fact that we seem no longer to produce great leaders. If this be true, is it in part caused by the decay of individualism in our national life? Is our mass action producing mediocrity?

Over thirty years ago President Cleveland declared: "I do

not believe that the power and duty of the general government ought to be extended to the relief of individual suffering which is in no manner related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that, though the people support the government, the government should not support the people." We have moved far since these words were penned, but they are echoed in the similar utterance of President Harding that: "We must combat the menace in the growing assumption that the state must support the people, for just government is merely the guaranty to the people of the right and opportunity of that people to support themselves." It may do no harm to remind ourselves that, first and last, the success and happiness of the individual depends upon himself.

"How small of all that human hearts endure,  
That part which laws or kings can cause or cure!  
Still to ourselves in every place consigned,  
Our own felicity we make or find."

### Questions

1. What are the objects of government as set forth in the Preamble to the Constitution? As civilization advances may we expect the government to do less or more? Why? What is the least that any government should do?
2. Give an example of the necessary functions of government; of the optional functions. What is the doctrine of laissez-faire? Would it work well in this country at present? Would this country be prosperous if no one was allowed to own anything individually, but in return for his labor was taken care of by the state? How has this plan worked in Russia?
3. Why did the government take so little part in the regulation of business and other ordinary affairs of life one hundred years ago? What has caused the great increase in the activity of the government in this respect?
4. What is the great community agency through which the individual citizen is able to cope with great combinations of labor or capital? What

is economic liberty? Is the American citizen as economically free as he was one hundred years ago?

5. Name some of the things which are used in your home which your family produced or obtained for itself, without the help of other persons. How do you get your clothes, food, water, light, fuel, medicines?

6. In general what part of an individual's conduct should be regulated by law? Should a man be required to take exercise; to eat prudently; to learn to read? Should the law prohibit smoking, dancing, playing golf on Sunday, swearing when done in private where no one can hear, drinking intoxicating liquor in private? Should the state punish a man for committing a sin where the act done does not affect other persons? How if the act might influence others to commit the same sin?

7. If the law's prohibitions are made to cover matters which the great mass of the people do not think should be prohibited, will the law be obeyed? In such case should one who disapproves of the law advise that it be disobeyed or that it be enforced? What is the best means of bringing about the repeal of an unpopular law?

8. Is it true that the government is best that governs least? To what extent should the government help the people to make a living? Would it be a wise thing for the government to give every person in the state an annual allowance for food and clothes? Where would the government get the money for paying such allowances? Ought the state to support the aged, insane, or physically disabled who are without other means of support?

## CHAPTER XXI

### PUBLIC FINANCE

**184. The Cost of Government.**—Government is expensive; how expensive may be seen from even a very slight examination of the figures on the subject. And it is much more expensive than it used to be. This is partly because the government does so much more for the people than it used to do, and partly also because the richer and more prosperous the country becomes, the more money it will spend. The rise in the American standard of living affects the government like everything else. In 1816 Congress appropriated \$8,000,000 for the construction of a small navy consisting of nine seventy-four-gun ships, twelve forty-four-gun ships, and three steam batteries—twenty-four ships in all. One modern battleship, of the latest type completely equipped, costs more than \$40,000,000. The increase in most other lines is not so great, but is large.

Our three governments, national, state, and local, are all busily spending money in rendering the service which the people demand. Of the total amount spent, it is estimated that, in normal times, the national government spends about one-third, the state and county governments nearly one-seventh each, and the municipal governments about three-sevenths. Most of this money is raised by taxation.

The normal net annual expenditure of the federal government just before the World War was about \$660,000,000. The average for the ten fiscal years 1910–1919, excluding the cost of the war, was \$661,548,870. Of this amount about \$164,000,000 went for pensions and the care of disabled soldiers (mostly pensions on account of the Civil War) and \$262,000,000 for the support of the army and navy. The total amount spent

annually for war purposes, in peace times, was therefore about \$426,000,000, or about 65 per cent of the total expenditure of the national government.

In 1910 the United States spent \$432,000,000 on war, although this country had been at peace since 1865, except for



U. S. SUBMARINES IN THE GATUN LOCK OF THE PANAMA CANAL.

the few months of the Spanish-American War in 1898 and occasional scrimmages with the Indians. The amount spent on pensions alone in two years would have nearly paid for the construction of the Panama Canal. The total civil expenditures during the period 1910-1919 averaged \$211,337,288. This does not include the expense of the Post-Office Department, which is largely self-supporting, and occasionally makes a profit. The postal receipts for 1914 were about \$288,000,000 and the cost of the service about \$284,000,000. The net annual cost of the federal government in normal times is about \$7

or \$8 per capita, which is not so bad after all when one considers how much this government does for the people.

Since the entrance of the United States in 1916 into the World War, the expenditures of the government have vastly increased, and they were greater in the years immediately following the close of the war in 1918 than during the war. The total expenditure of the federal government in 1920 was more than four and one-half billion dollars (\$4,582,000,000). Most of this was for war. The amount spent on account of past wars is placed at \$2,890,000,000, or 63.2 per cent of the whole. In preparation for future wars there was spent \$1,348,000,000, or 29.4 per cent. The total amount spent on past and future wars was more than four billion dollars (\$4,238,000,000), or about 93 per cent of the total expenditure. The total cost of all the civil departments of the government was \$220,000,000, or less than 5 per cent of the whole. For public works, research, public health, education, and irrigation, forestry, and other development work, there was spent \$124,000,000, or about 2.7 per cent.

Summing up: of every dollar spent by the United States Government in 1920, *ninety-three cents went for war and seven cents went for all other purposes*. Putting it another way: the government spent *thirteen times as much on war as on all other purposes put together*. Think of the universities that might have been endowed, the thousands of miles of roads that might have been constructed, the hospitals that might have been built, the libraries that might have been established, with only a part of the \$4,000,000,000 spent by the United States on war in a single year!

**185. Cost to the United States of the World War.**—No government ever spent money with so lavish a hand as did the government of the United States during the period of the World War. This country did not go actively into the war until April, 1917, and hostilities ceased on November 11, 1918; but the period of abnormal expenditure on account of the war did not end when the actual war ended. In fact nearly twice



ONE BATTLESHIP, WITH AMMUNITION, COSTS \$40,000,000.



© Major Hamilton Maxwell.  
THE COST OF ONE BATTLESHIP WOULD ENDOW FOUR UNIVERSITIES LIKE PRINCETON.

as much money was spent on account of the war during the year ending June 30, 1919 (\$13,784,896,245), as during the year ending June 30, 1918 (\$7,986,242,636). The total expenditures over the estimated normal expenditures on a pre-war basis during the four years (1917-1920) ending June 30, 1920, amounted to the inconceivable sum of nearly twenty-six billion dollars (\$25,982,723,219).

Much of this was raised by loans to the government, but nearly twelve billions (\$11,818,699,300) were raised by extra taxation. In other words, during these four years the people of the United States paid over and above the estimated normal expenses of the government 45.5 per cent of the cost of the war, leaving only 54.5 per cent to be paid in the future. Unfortunately, the extraordinary expenditure on the army and navy has not yet ceased, and it now seems that the war expense of the government will be for an indefinite period far greater than it was before 1917. Pensions and bonuses, if nothing else, will probably keep it going. To the cost of the war should be added about nine and one-half billion dollars (\$9,445,006,855) loaned to foreign governments to help them carry on the war.

**186. The Financial Powers of Congress—The Taxing Power.**—The Constitution vests the federal government with ample financial powers, the very first power granted to Congress being the power to tax, and the second being the power to borrow money. First, as to the taxing power. It is provided that: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

A tax is a charge imposed by the government on persons or property for the purpose of raising money for the support of the government or for carrying on its operations. Taxes are imposed upon the theory that they are merely contributions by the taxpayer in return for the protection to life, liberty, and property, and for the various other benefits afforded by

the government. Without the power to tax, the government could not be carried on, but at the same time no power of the government is more far-reaching or more easily abused than the taxing power. Since it strikes the citizen in a tender spot—his pocket—the people are extremely sensitive to the way in which the power is exercised. For the political party in power to increase taxes without showing a corresponding benefit to the people is one of the easiest ways to invite defeat at the next election.

The laying of a just and workable tax is one of the most important and difficult tasks which the government has to perform. The selection of the things to be taxed, and the mode of laying the tax, and the rate of taxation, require the highest degree of care and judgment if the result is to be satisfactory. Probably no one task of the government has given the authorities more trouble or the people less satisfaction than the exercise of the power of taxation.

**187. Particular Rules as to Taxation by Congress.**—All taxation must be for some public purpose. The Constitution authorizes Congress to lay and collect taxes, “to pay the debts and provide for the common defense and general welfare of the United States.” These very general purposes for which Congress may tax seem to include every possible public use coming within the general authority of the federal government. The *manner of laying taxes* is prescribed in the Constitution. In this connection taxes are divided into *direct* and *indirect*. It is provided that direct taxes shall be apportioned among the states according to population. In laying a direct tax, Congress must first decide the total amount to be raised, and then apportion it among the states, collecting from each state the same part of the entire amount to be raised as the population of the particular state is of the total population of the United States. This is a very awkward mode of laying taxes, and Congress has rarely imposed direct taxes.\*

\* Direct taxes were laid on real estate in 1798, 1813, 1815, 1816, and 1861. These are the only instances in which Congress has undertaken to lay direct taxes. The income tax of 1894 was laid as an indirect tax, but

The Constitution provides that "all duties, imposts, and excises shall be uniform throughout the United States." Such taxes are the indirect taxes, though that term is not used in the Constitution. The uniformity required is *geographical uniformity*, not that everything shall be taxed at the same rate. It means that the rate on any particular thing must be the same wherever the thing is found. It may not be taxed at one rate in one state and at a different rate in another state. Thus, the rate of duty on imported tobacco, for example, must be the same at every port at which such tobacco is received into this country. A similar provision is the prohibition against giving preferences to the ports of one state over another.

With two exceptions, Congress may tax everything that is in its nature taxable. All kinds of property and business and occupations of every sort may be taxed. Congress may lay a poll (capitation) tax, but has never done so. But both Congress and the states are expressly forbidden to tax exports. This is to prevent the placing of a burden upon the foreign trade of the country. A tax on exported goods might put American producers at a disadvantage in competing with foreign producers in foreign markets, for the amount of the tax would have to be considered in fixing the price of the goods.

This is the only express limitation on Congress as to what may be taxed. But by *implication* Congress is prohibited from taxing the *governmental agencies* of the states. "The power to tax," declared Chief Justice Marshall, "involves the power to destroy." If Congress were permitted to tax the public agencies of the states, it might put the state governments out of existence by taxing them to death. A small tax on state bonds, for example, might make it impossible for the state to

the Supreme Court held it to be direct. There has been much discussion as to what is a direct tax, but so far the Supreme Court has held only the following to be direct taxes in the constitutional sense: (1) capitation tax; (2) tax on real estate; (3) tax on personal property according to its value; (4) tax on the income from real estate; (5) tax on the income from personal property.

borrow money. No one would buy state bonds if the tax he had to pay on them equalled or exceeded the interest paid by the state on the bonds. The Constitution contemplates the continued existence of the states as well as of the United States, and therefore impliedly forbids Congress to tax state bonds, the process or proceedings of state courts, the salaries of state officers, or any other governmental agencies of the state. On the same principle, a state may not tax the agencies of the federal government.

**188. Customs and Internal Revenue.**—Federal taxes are divided into two general classes, customs and internal revenue, though neither of these terms is used in the Constitution. Customs are duties or imposts on articles or commodities imported into this country from foreign countries. The internal revenue includes the various excises and the tax on incomes. Prior to the Civil War the federal government was supported almost entirely by the revenue from customs, very little use being made of the power to impose internal taxes. Since 1863 the receipts from internal taxation and from customs have been about the same. The most important single items have been the tax on distilled and fermented liquors and tobacco, and, since the adoption of the Sixteenth Amendment in 1913, on incomes.

The total receipts of the federal government for the year ending June 30, 1914, immediately before the outbreak of the World War, were about \$735,000,000, of which \$292,000,000 came from customs and \$380,000,000 from the internal revenue. The receipts from the tobacco tax were about \$80,000,000; from the tax on intoxicating liquors, about \$220,000,000; from corporation income tax, \$32,000,000; and from individual income tax, \$28,000,000. It will be seen that the tax on tobacco and intoxicating liquors yielded about \$300,000,000, or nearly three-fourths of the entire internal revenue, and nearly half of the entire income of the government. This was the latest normal year, taxes since the war began being vastly greater. The total internal revenue for the year ending June

30, 1919, was \$3,840,230,995, of which \$2,600,762,734 was income and excess-profits tax.

The federal government first taxed incomes in 1861 to meet the expenses of the Civil War. This tax was continued until 1872, when it was dropped, and from that time until 1894 there was no federal income tax. In 1894 Congress passed a new income-tax law similar in general form to the earlier law, the tax in both cases being laid uniformly as being an indirect tax. But in 1895 the Supreme Court, in the famous *Income Tax Case*, held the law unconstitutional on the ground that an income tax, so far as incomes from property are concerned, is a direct tax, and that therefore the tax should have been apportioned and not made uniform, as had been done. This meant that Congress could not tax the income from property at all, for it is not practicable to make such a tax fair throughout the country if it has to be apportioned according to population, for wealth does not vary directly according to population. Two states of equal population would have to pay the same tax, although the number of taxpayers subject to the tax might be much greater in one state than in the other. This decision led to the adoption of the Sixteenth Amendment in 1913, authorizing Congress to tax incomes without apportionment. Under this amendment uniform income taxes have been imposed which yield an enormous revenue.

**189. The Tariff Acts.**—The laying of customs duties is a matter entirely within the discretion of Congress, which may decide what articles shall be taxed and what admitted free of duty, and also the amount of the tax. The framing of tariff legislation is one of the most difficult and important duties of Congress, as may readily be seen when it is considered how many hundreds of different kinds of articles are imported into this country, each of which must be separately dealt with. The fixing of the tariff has played a large part in the political history of the country. There are two main policies about the tariff: one that the duty should be imposed merely for the raising of revenue ("tariff for revenue only"), and the other that it should be so adjusted as to protect American industries by

limiting or cutting out foreign competition by putting a heavy tax on articles of foreign production. This is the "protective tariff."

The direct benefit of a protective tariff goes to the American producer, who can charge more than he otherwise could for his product, because there must be added to the price of foreign articles not only the cost of transportation but also the amount of the duty. It is claimed, however, that the public benefits also, and that the tax is thus for the "general welfare." It is argued that the prosperity of the producer helps the community, and that the encouragement by this protection gives more employment and higher wages to American workmen. It is supposed also to be an advantage for us to be able to produce as many of the things we need as possible, so that we may be to that extent independent of other countries. Without protection the manufacture of some things we need would not be profitable enough to encourage manufacturers to make them. Domestic production is stimulated by the protective tariff. The Democratic party has traditionally stood for "tariff for revenue only," while the Republicans have advocated a high protective tariff. However, party lines are not now very closely drawn on this question.

The tariff laws are revised at irregular intervals. All tariff and other tax laws originate in the House of Representatives, and are in charge of the ways and means committee. In the Senate they are considered by the finance committee.

**190. Amount of and Mode of Levying Tax.**—The rate of taxation, unless expressly limited by the constitution, is a matter absolutely within the discretion of the legislature. There are no limitations in the federal Constitution, and Congress may fix the tax at any amount. If the purpose of the tax is to raise a revenue, as is usually the case, the tax must not be so heavy as to defeat this purpose by suppressing the thing taxed. But if suppression is the purpose of the tax, the rate will be made prohibitive.\*

\* Congress has several times used the taxing power for the purpose of suppressing the thing taxed, in some cases using it as a substitute for the

In taxing imports the duty may be made *specific*, that is, so much for each unit of quantity, or *ad valorem*, or according to value. Thus in 1870 the duty on steel rails was fixed at the high specific rate of \$28 per ton (a protective tariff), but in 1848 steel rails were made subject to an *ad valorem* duty of 20 per cent. Sometimes the duty exceeds the value of the article. Thus in 1898 the average *ad valorem* rate on tobacco and manufactures thereof was 121 per cent. In 1912 the duties collected on dutiable articles amounted to 40 per cent of their value. Sometimes a compound duty is laid, being both specific and *ad valorem*, such as the duty of 1828 on wool, which was four cents per pound plus 50 per cent *ad valorem*.

Internal revenue taxes, or excises, are usually specific, for example, the tax of two cents on each bank check imposed by the law of 1898, or the tax of \$1.10 a gallon on distilled spirits under the law of 1894. They may also partake of the nature of *ad valorem* taxes, as in the case of the stamp taxes laid on perfumes, cosmetics, medicines, etc., and on incomes, under the war tax of 1919. These varied according to the price of the article or the amount of the income.

**191. The Power to Borrow Money.**—The Constitution provides that Congress shall have power “to borrow money on the credit of the United States.” The ordinary expenses of the government are met by taxation, but when it becomes necessary to raise a large sum of money quickly, as in time of war or other emergency, or for public improvements, this method is inadequate, for it would unduly burden the people, whereas a loan may be quickly negotiated, and the repayment

police power, which has not been granted to Congress. By taxation at a prohibitive rate, Congress has suppressed paper money issued by state banks; the sale of oleomargarine so colored as to pass for butter; the manufacture of phosphorus matches, which is dangerous to workmen; and the manufacture of opium for smoking purposes. A similar use of the taxing power as a means of regulating matters supposed to be exclusively within state jurisdiction is found in the Harrison Drug Act, regulating the manufacture, sale, and dispensing of narcotics, and the Child Labor Law of 1919.

of the money borrowed may be distributed over a period of years, and thus fall lightly in any one year. Moreover, as the benefits of the expenditure will usually be shared by those who are to come after, it is just that they should pay their share of the expense incurred.

The money borrowed must in the end, of course, be repaid by taxation, but the burden of taxation is lightened and distributed by the resort to borrowing in the first instance. Notes of the United States, corresponding to the promissory notes of individuals, are sometimes issued as evidence of the loans, and such notes are largely used as paper money. A common mode of borrowing is by the sale of United States bonds. More than \$5,000,000,000 worth of these bonds were issued during the Civil War, some being issued to replace others that were cancelled. The Liberty and Victory Loan bonds issued to finance the World War amounted to over \$19,000,000,000. The postal-savings deposits and war-saving stamps are other examples of the exercise of the power to borrow money.

**192. State and Local Finance.**—The state and local governments, like the federal government, finance their operations chiefly by taxation and loans. The revenues and expenditures of the municipal governments greatly exceed those of the state governments and also those of the national government except in time of war. The total revenue of all state governments in 1918 was \$588,305,651, and that of the 227 cities in the country having 30,000 population was \$1,124,094,899. Probably the expenditures of city governments in the United States usually amount to about three-fourths of the combined expenditures of the county, state, and national governments. The total revenue in 1919 of the 227 cities of 30,000 and over was \$1,192,920,422, and the total indebtedness of these cities was \$3,840,742,226. In 1919 New York City had a debt of \$1,555,791,809, or greater than that of the national government except during the Civil War and since the outbreak of the World War. The next largest municipal debt was that of Philadelphia, which was \$178,545,446. The total revenue of

New York City in 1919 was \$245,292,365, and that of Philadelphia, \$62,930,131.

These figures give some idea of the size of the financial operations of city governments. The opportunities for waste, extravagance, and dishonesty in handling such vast sums of money are almost unlimited. Much money has been lost to taxpayers by bad management and corruption, but in recent years an increasing amount of attention has been paid to the correction of the evils of municipal financing. It need hardly be said that the expense of state and local government has rapidly increased in recent years. In 1919 the revenues of the state governments were 83.6 per cent more than in 1913. The increase in the revenues of the cities is somewhat less.

**193. State Taxation.**—The state legislature has full power to tax, except for a few restrictions in the federal Constitution and such other restrictions as may be found in the constitution of the state. The federal Constitution provides that: "No state shall, without the consent of Congress, lay any duties on imports and exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any state on imports and exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage." The object of these restrictions is to prevent the states from interfering by taxation with commerce.

Besides the above express restrictions, there are in the Constitution some implied restrictions on the state's taxing power. Since one of the objects in granting to Congress the power to regulate interstate and foreign commerce was to protect such commerce from burdensome state legislation, the state is prevented by the commerce clause from interfering with such commerce by taxing it in any way.

Another implied limitation on the state's taxing power is that the state may not tax the agencies, instrumentalities, or

property of the federal government, such as United States bonds, salaries of federal officers, post-office buildings, etc. But a state may tax the bonds or property of another state if within its borders.

The most productive source of state and local revenue is the general property tax, that is, a tax on real estate and personal property. As a rule the larger share of this is collected by the counties or municipalities in which the property is situated. The property tax is satisfactory as applied to real estate, but much less so as applied to personal property. Real estate is fixed and cannot be hid, and its value can be pretty easily estimated. Land and the improvements on it constitute, therefore, a suitable subject for taxation. Personal property, such as household goods, farm implements, horses and vehicles, cattle, stocks and bonds, promissory notes, etc., are less suitable, either because they are hard to value or because they can be easily moved away or concealed. The tax on the personal property of individuals is comparatively unproductive. Poll, or capitation, taxes are levied in a few states, but are not popular.

The total revenue of all the state governments in 1918 from the general property tax was \$209,479,197, and from the poll-tax only \$2,100,556. In the same year the cities of 30,000 population and over received \$705,723,158 from the general property tax, and \$2,014,952 from the poll-tax. By means of a special property tax on corporation stocks and bonds large revenues are now being raised from a class of property which formerly quite generally escaped taxation. Insurance companies and banks and railroad companies are also taxed. Other important sources of revenue are taxes on inheritances and incomes, business licenses and other licenses, and fines and forfeitures. The license tax on automobiles has become very productive. The cost of local improvements, such as streets, sidewalks, sewers, and the like, is largely borne by special assessments against the property specially benefited.

**194. Subjects of Taxation—Exemptions.**—Except in so far as the matter is controlled by the state constitution, the selec-

tion of subjects for taxation is wholly within the discretion of the legislature, which may tax some property or occupations and exempt others as it sees fit. Unless the constitution so requires, no particular property or occupation need be taxed; it is not necessary that everything should be taxed in order that something may be taxed. However, the state constitutions commonly provide that all the property in the state is taxable or shall be taxed, but make certain exemptions.

In selecting the subjects of taxation the burden of taxation is distributed with a view to the best interests of the whole community. Various considerations enter into the determination of the question; among them, the ability to pay, the character of the property or business as to yielding an income, the nature of the article as a luxury or a necessity, the use to which the property is put, etc. The exemption of certain classes of persons or property from taxation, when all receive the same protection from the state, may seem unjust in that the burden of taxation upon the persons and property taxed will be heavier because of the exemptions, but such exemptions are common, and upon examination it will usually be found that they are both just and expedient. The principal exemptions are as follows:

1. *Public Property and Instrumentalities of Government.*—It is hardly necessary to say that public property used for public purposes should not be taxed by the public authorities. The public is itself the largest single property-owner, but it would be absurd for the state to tax its capitol building, its courthouses, its roads and streets, its public parks, and other property used in the public service. The state would both pay and receive the taxes; in other words, pay itself, which would be getting nowhere. Taxes are collected *for* these objects, not *from* them.

2. *Private Property Used for Public Purposes.*—Many of the secondary functions of the government, not strictly of a governmental character, may be performed by private persons just as well as by the government itself. When private persons

or corporations devote their property to the public service, and not for profit, they should not be taxed for the privilege of doing so. On this principle the property of educational, scientific, literary, and charitable institutions is exempted from taxation. These institutions, when not run for profit, yield no net income but are an expense to those who maintain them. They therefore lack the ability to pay the tax. A tax on their equipment would be not so much a tax on property as a tax on education, science, literature, and charity. If its property were taxed like other property, a college often could not afford to accept the gift of a valuable collection of books, scientific apparatus, or works of art, or an orphan asylum might not be able to accept a new building, because it could not pay the taxes on it.

These institutions are rendering a public service and their property is devoted to a public use. They are doing for the public what the state itself might do and to a great extent does do. They are thus lightening the burdens of the state. The taxation of a university maintained by the state would be as absurd as the taxation of a public road. Why should not a privately endowed university doing the same work as a state university also be exempt from taxation? The owners of taxed property can no more justly complain of the increased burden put upon them by the exemption of a privately supported hospital from taxation than of an increase in their taxes for the support of a hospital maintained by the public. Of course this does not apply to an institution run for private profit. These should be taxed, notwithstanding they are rendering a public service. Railroad companies pay enormous taxes, yet their property is devoted to a public use.

*3. Property Used for Religious Purposes.*—The exemption of property used for religious purposes stands on a somewhat peculiar footing. To some extent it might seem to violate the constitutional prohibition of the establishment of religion. Such property receives the same protection as taxed property, but does not bear its share of the burden. Nevertheless, it is

the settled doctrine that this exemption does not violate the constitutional prohibition, provided the property of all sects or denominations is exempted alike. In one respect church institutions differ in this connection from educational, scientific, literary, and charitable institutions. Since the state may not establish religion, the churches are rendering a service which could not be rendered by the state. Nevertheless, the exemption of their property from taxation is fully justified by the influence they exert in promoting good citizenship and public morals. Few persons would care to live in a churchless state, and such a state would be hard to govern. If the churches were closed, the police force would have to be greatly increased. This fact by itself justifies the exemption of church property.

### Questions

1. Why does the government spend more now than in former times? What proportion of the money spent by the federal government goes for war?
2. In 1921 the Allies owed to the United States, on account of the war loans, about \$11,000,000,000, counting the unpaid interest. The United States obtained the money to lend to the Allies by the sale of Liberty bonds. It has been suggested that the United States cancel the debt of the Allies. In that case how would the United States get the money to pay the Liberty bonds, and in the end who would pay the debt of the Allies?
3. What are the financial powers of Congress? What is the accepted practical rule as to how taxes shall be levied?
4. If Congress wanted to tax land throughout the United States, how would it go about laying the tax? May Congress tax state bonds?
5. What are the two general classes of federal taxes? Why was the income-tax law of 1894 held unconstitutional? How was the effect of this decision overcome?
6. What is a protective tariff? Which political party has usually advocated such a tariff?
7. Explain how Congress was able by taxation to prevent state banks from issuing paper money.
8. Why should the government sometimes obtain money for constructing public improvements by borrowing rather than by taxation?
9. Mention the most important subjects of state taxation. May the state tax the salary of postmasters?
10. Give two examples of classes of property usually exempted from taxation, and explain why such property should not be taxed.

## CHAPTER XXII

### MONEY AND BANKING

**195. Federal Control Over the Currency.**—The money in circulation in the United States, with the exception of a small amount of foreign coins, is that issued by the United States Government or by national banks chartered by the United States. The Constitution expressly provides only for the issuance of coined money by the United States, power to issue and to authorize banks to issue paper money being found by implication. The constitutional provisions are as follows: "The Congress shall have power . . . to coin money, regulate the value thereof, and of foreign coin," and "to provide for the punishment of counterfeiting the securities and current coin of the United States." Also: "No state shall . . . coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts." The wisdom of conferring the power to supply a national currency upon the federal government is clear. Nothing could be more inconvenient to the business world than to have to depend for currency upon the independent issues of the separate states. This indispensable aid to business is furnished by the national government.

**196. Metallic Money.**—In the United States, as in other countries, the most important metals used in coinage are gold and silver. The baser metals so used are, as metals, of trifling value—the value of the coin is derived from the government's imprint; but gold and silver coins derive their value largely or mainly from the value of the precious metals which they contain. Uncoined gold has the same purchasing power as gold coins of the same weight. The government's stamp is simply a guaranty of fineness and weight. This is not so true of silver, which is essentially a commodity and used largely

in the arts. Its value is determined, like that of cotton, wheat, or any other commodity, by the law of supply and demand.

Gold, although used to a considerable extent in the arts and for purposes of ornament, is not primarily a commodity, but among civilized peoples is used mainly as a medium of exchange and as a standard of value. Not only is it peculiarly adapted by its nature for use in coinage, but the metal itself "occupies a unique place among the substances of which the earth is composed. It is accepted by civilized man without compulsion and without limit in exchange for all other kinds of property and for all the services that men render to each other for hire. For this reason it is an object of universal desire. As a mineral it is sought for with greater eagerness than any other substance in or upon the earth." \* The value of gold, while not altogether constant, varies less than that of any other substance suitable for use as money, and this fact, taken in connection with its other properties, makes it the most suitable of all known substances to use as a standard of value in a system of currency.

#### 197. Free Coinage—Bimetallism and Monometallism.—

The government may coin money on its own account out of bullion owned by it, or it may coin money for private individuals out of bullion owned by them. Sometimes governments make a charge, called *seigniorage*, for coining money for individuals, but no such charge is made by the United States. Where a government will coin without charge unlimited quantities of a metal for private persons, exchanging coins for an equal weight of metal, there is said to be *free coinage* of this metal. Naturally a government will not ordinarily do this except where the market value of the metal in a coin is as much as the face value of the coin. And if the market value of the metal is greater than the face value of the coin, the owner would not wish to have his bullion coined. Only metals of high market value can be coined on this basis, and only gold and silver are so coined.

Where there is free coinage of both gold and silver, the coin-

\* White, "Money and Banking," p. 41.

age is on a *bimetallic* basis; where there is free coinage of only one metal, the system is *monometallic*. Where the bimetallic system is used, the amount of metal in the gold and silver coins, respectively, is so adjusted that the market value as metal of a silver coin will be the same as that of a gold coin of the same denomination. The aim is to fix the *coinage ratio* of the two metals at the same figure as the *market ratio*. Thus if an ounce of gold is worth sixteen times as much as an ounce of silver, the coinage ratio of the two metals should be 16 to 1, that is, the silver dollar should contain sixteen times as much silver, by weight, as the gold dollar contains of gold.

The trouble with bimetallism is that it is impossible to keep the coinage ratio the same as the market ratio, for the market value of silver as compared with gold is very unstable, so that the metal in a silver dollar will sometimes be worth more and sometimes less than the metal in a gold dollar. In such case, though the *face* value of the two coins will remain the same, their actual value as metal will be different. When this happens, the money of less intrinsic value will drive the more valuable money out of circulation, according to the maxim that "bad money drives out good." This is because the coin that is worth more as metal will be melted and used or sold as metal, or sent to foreign countries where its purchasing power will be greater than at home. A very slight difference in the actual value of silver and gold coins will cause the disappearance of the more valuable money from circulation. This principle is known as Gresham's law, after Sir Thomas Gresham, an English financier of the sixteenth century.

198. **United States Standards up to 1873.**—From the beginning of the coinage of gold and silver in 1794–1795 until 1873 the coinage of the United States was on a bimetallic basis, there being free coinage of both gold and silver. From 1794 to 1834 the coinage ratio was 15 to 1, it being figured that gold was actually worth fifteen times more than silver. This undervalued gold. The ratio was changed in 1834 to about 16 to 1, at which it remained until 1873. This undervalued silver,

so that a silver dollar was worth more as bullion than a gold dollar. From 1794 to 1834 gold, being more valuable as bullion than as money, disappeared from circulation. During the period 1834–1873 silver dollars disappeared for the same reason. Fractional silver coins disappeared also, so that the country had to depend on foreign coins for small change. To meet this situation Congress in 1853 reduced the amount of pure silver in all fractional silver coins so that they became more valuable as money than as silver, and consequently remained in circulation. This statement of the operation of Gresham's law in this country shows the difficulty of maintaining the double system.

Although the statutes provided for the free and unlimited coinage of silver into dollars from 1794 until 1873, very few silver dollars were coined, the total coinage up to 1873 being only \$8,031,234, most of which were melted into bullion or shipped abroad. In 1873 the coinage laws were revised, and, there being practically no silver dollars in circulation and no demand for them, it was decided to drop the silver dollar from the list of authorized coins. This very reasonable action of Congress, being merely the formal dropping from the list of a coin not actually in circulation, was done publicly but attracted little attention at the time. Few would care to have their silver coined into dollars when it was worth more as bullion. Later, during the "Free Silver" campaign of 1896, the act of demonetizing the silver dollar was denounced as the "crime of 1873."

**199. Limited Coinage of Silver Dollars (1878–1904; 1921).**

—During the period 1873–1877 no silver dollars were coined by the United States except "trade dollars" authorized by the act of 1873 for use in the trade with China and Japan. Trade dollars were coined during the years 1873–1878 to the amount of \$35,965,924. During this period the market value of silver fell, owing to the discovery of large deposits of silver in the West. Then began an agitation for the resumption of the free coinage of silver dollars. This was led by the owners of

silver-mines and the advocates of cheap money, a demand for which had been created, especially in the West and South, by the decline in the price of agricultural products and the increase in the price of manufactured articles.

Free coinage was not resumed, but, by way of compromise, Congress passed the Bland-Allison Act of 1878 and the Sherman Silver Purchase Act of 1890, providing for the purchase and coinage of silver by the government on its own account. Under these acts 570,272,610 silver dollars were coined, coinage being stopped in 1904. These dollars were given the same value as gold dollars by the government imprint, but were intrinsically worth much less, owing to the low value of silver. Their coinage, therefore, represented a loss to the government. Under the act of 1890 treasury notes to the amount of \$156,000,000 were issued in payment for silver purchased by the government. These constituted a part of the paper money of the country for many years, but have now been retired.

At the time of the opening of the presidential campaign of 1896 business depression and labor troubles had so increased the demand for cheap money that the Populist and Democratic parties united on a platform demanding the "free and unlimited coinage of silver at the ratio of 16 to 1," with William Jennings Bryan as their candidate for the Presidency. The campaign was one of the most exciting in the history of the country. Bryan was defeated, but in 1900 was again a candidate on a platform with free silver as one of its planks. By this time the country was prosperous and had lost interest in cheap money. In the currency act of 1900 the gold standard was definitely re-established.

Most of the silver dollars coined under the acts of 1878 and 1890 remained in the treasury, never getting into circulation. During the World War the price of silver rose so that the dollars were worth more as bullion than as money, and in 1918 Congress authorized their conversion into bullion. Accordingly, 260,121,554 silver dollars in the treasury were melted up, chiefly for use in the Oriental trade. In 1921 silver dollars

were again coined by the government to some extent to replace some of those so melted.

200. **United States Mints.**—The first United States mint



MACHINE IN A U. S. MINT, WHICH PUNCHES OUT GOLD PIECES TO THE VALUE OF \$360,000 AN HOUR.

was established at Philadelphia under the coinage act of 1792. This is still the principal mint. Other mints have been established and maintained at the following places: New Orleans; Charlotte, North Carolina; Dahlonega, Georgia; San Fran-

cisco; Carson City, Nevada; and Denver. The only mints now in operation are those at Philadelphia, San Francisco, and Denver. Provision has also been made for the establishment of a mint in the Philippine Islands.

Congress has established in the Treasury Department a Bureau of the Mint, embracing in its organization and under its control all mints and government assay offices. The chief officer of the bureau is the director of the mint, who is under the general direction of the secretary of the treasury. The total domestic coinage of all the mints up to July 1, 1918, amounted to \$4,569,765,700.13, of which nearly half was coined by the Philadelphia mint. There has also been considerable coinage for foreign governments.\*

**201. United States Coinage.**—The United States decimal system of coinage was suggested by Thomas Jefferson. The original unit was the dollar, with the same value as the Spanish silver dollar then current, the weight of the pure metal in the gold and silver dollars respectively being at the ratio of 1 to 15. The present standard is the gold dollar, which weighs 25.8 grains, of which 23.22 is pure gold and the rest alloy put in to harden the coin, which is thus nine-tenths fine, or pure gold. The gold dollar was first actually coined in 1849, but coinage

\* The total coinage of the several mints to 1917 is as follows: Philadelphia (1792-1917), \$2,009,660,765.17; New Orleans (1838-1861 and 1879-1909), \$298,660,707.60; Charlotte (1838-1861), \$5,059,188; Dahlonega (1838-1861), \$6,106,569; San Francisco (1854-1917), \$1,946,-775,165; Carson City (1870-1893), \$49,274,434.30; Denver (1906-1917), \$210,631,915. The total coinage of all the mints up to July 1, 1918, amounted to \$4,569,765,700.13. The above figures do not include coinage for foreign governments. The total domestic coinage of the three active mints for the year ending June 30, 1918, was \$43,596,895.91, the largest in the history of the mints. They worked twenty-four hours a day to keep up with the unprecedented demand for fractional currency owing to business conditions growing out of war activities. No gold was coined. The combined coinage for the three mints was 714,000,000 pieces of domestic coinage and nearly 53,000,000 foreign pieces. The number of one-cent pieces coined during the year was 445,628,201, or nearly half a billion, which is probably the largest number of any single coin ever coined in one year.

was discontinued in 1889, the coin being too small for use. The other gold coins are multiples in weight of the dollar, those now authorized being the quarter-eagle (\$2.50), the half-eagle (\$5.00), the eagle (\$10.00), and the double-eagle (\$20.00).

The silver coins are the dollar, half-dollar, quarter-dollar, and dime. The silver dollar weighs 412.50 grains, of which 371.25 grains is pure silver and 41.25 grains is copper. The present ratio of silver to gold in the dollar is about 16 to 1. The half-dollar weighs 192.9 grains, and the quarter-dollar and dime one-half and one-fifth as much respectively as the half-dollar. It will be seen that the fractional coins contain proportionally less silver than the dollar, all the coins being nine-tenths fine. The minor coins are the five-cent piece, which is composed of three-fourths copper and one-fourth nickel, and weighs 77.16 grains, and the one-cent piece, which is 95 per cent copper and 5 per cent tin and zinc, and weighs 48 grains. Other coins have been coined at different times.

**202. Foreign Coins.**—Foreign coins constituted the chief metallic currency of the United States prior to the Civil War, the operation of Gresham's law keeping United States silver coins out of circulation for much of the time. Up to 1857 they were legal tender, but after that year have not been so. Under its power to "regulate the value" of foreign coins, Congress has provided that their value in United States money shall be that of the pure metal therein, and that the values of the standard coins of the various nations shall be estimated quarterly by the director of the mint and proclaimed by the secretary of the treasury.

**203. Paper Money.**—Prior to the Civil War the federal government made no attempt to provide a paper currency for the country. Congress issued no notes intended to circulate as money. The paper currency consisted of notes of banks chartered by the states and of the Bank of the United States while it existed.

During the Civil War the United States, under several acts of Congress, issued large amounts of paper money in order to

help finance the war, the total amount issued being about \$450,000,000. These United States notes were known as "greenbacks" from their color. After the war the retirement of these notes was begun, but by act of 1878 this was stopped when the amount of outstanding notes was \$346,681,016, at which figure it has since remained. These notes are required by law to be reissued when received by the treasury, notes mutilated or otherwise injured being replaced by others. These notes are secured by a special fund of \$150,000,000 in gold in the treasury. In 1863 Congress authorized the establishment by private individuals of national banks, with power to issue circulating notes, and in 1865 drove the notes of state banks out of existence by imposing on them a prohibitive tax. Thus a monopoly was secured for the United States notes and notes issued by national banks chartered by Congress, which then constituted the paper money of the country.

The paper money now in circulation is as follows: (1) *United States notes* (greenbacks). (2) *National bank notes*. (3) *Treasury notes of 1890*, issued in payment for silver purchased under the act of 1890. These are now practically all retired. (4, 5) *Gold and silver certificates*. These are certificates issued against gold and silver coin or bullion in the treasury. Unlike other notes, they are not promises to pay, but merely a substitute for the coin, being more convenient for use than coin. (6) *Federal Reserve notes*. These are issued under the Federal Reserve Act of 1913 by the Federal Reserve Board. They are obligations of the United States redeemable in gold on demand. (7) *Federal Reserve Bank notes*. These are issued by the reserve banks under similar conditions and terms as national bank notes. Directly or indirectly all these kinds of paper money are secured by the credit of the United States Government.

**204. Legal Tender.**—Money is legal tender when a creditor may be compelled to receive it at its face value in payment of his claim. No money is legal tender unless made so by law. In the absence of a constitutional prohibition, a government

may declare any kind of money to be legal tender. It may stamp a disk of iron into a dollar, or make \$1,000 out of a piece of paper, and require creditors to receive them at their face value. But for a government to make worthless or depreciated currency legal tender works a hardship on creditors whose claims are based on currency worth its face value. No commercial evil was more painfully in the minds of the framers of the Constitution than the bad condition of the currency at that time. The country was flooded with paper money, none of which was worth its face value in gold and much of it was worthless. Yet some of it had been declared by the state governments to be legal tender.

With this evil in mind the convention put into the Constitution the provision that: "No state shall make anything but gold and silver coin a tender in payment of debts." No such restriction is laid on Congress, and the Supreme Court finally decided, after a famous legal battle, that Congress may make paper money, as well as coin, legal tender. Of course, so long as the government is able to redeem any of its money in gold on demand, it makes no difference; but when the government is not able to do this, as sometimes happens, it is another story.

By the present law the following money is now legal tender: gold, United States notes, and gold certificates, in any amount; silver dollars and treasury notes in any amount, unless otherwise stipulated in the contract; subsidiary silver coins up to an amount not exceeding \$10; minor coins up to an amount not exceeding 25 cents.

**205. Monetary Stock of the United States.**—The total stock of money in the country, exclusive of minor coins except of silver, on June 30, 1919, as reported by the secretary of the treasury, was \$7,474,286,797, or about \$54 for every man, woman, and child in the United States. About 42 per cent of this money was in gold, the total amount of which was \$3,112,320,547. The per capita amount of money in the United States has greatly increased in recent years.

MONETARY STOCK OF THE UNITED STATES AT INTERVALS				
Year Ending June 30	Circulation	Total Stock	Population	Circula- tion Per Capita
1860.....	\$435,407,252	\$442,102,477	31,443,321	\$13.85
1870.....	676,284,427	723,940,094	38,558,371	17.51
1880.....	973,382,228	1,185,550,327	50,155,228	19.41
1890.....	1,429,251,270	1,685,123,429	62,622,250	22.82
1900.....	2,055,150,998	2,339,700,673	76,303,387	26.93
1910.....	3,102,355,605	3,419,591,483	90,363,000	34.33
1918.....	5,379,427,424	6,741,072,294	105,869,000	50.81
1919.....	5,766,029,973	7,474,286,797	107,600,000	54.33

**206. Banks and Banking.**—Modern business would be impossible without banks. The banks constitute, so to speak, the financial heart and circulatory system of the community. The main functions of a bank are to receive and lend money and to facilitate the use of credit. Some banks also issue notes which circulate as money. Very few persons keep large amounts of money in their homes or places of business. This would not be safe, for the money might be stolen or destroyed by fire, rats, or otherwise. The place for money is in the bank, which will receive it on deposit to the credit of the depositor. He may either use the money as a fund on which to draw checks in payment of bills, or he may lend it to the bank on interest.

As a rule, the amounts kept by individual depositors on checking accounts are small, for they are constantly being drawn on by checks, but in the aggregate the amount of the checking deposits in a bank is large. The bank does not actually keep all this money in its vault, but only so much in cash as may be needed to pay checks as they are presented from day to day. The rest it lends out along with the bank's own money and money of depositors deposited on interest-bearing account. The bank charges interest on the money it loans, and thus makes a profit. The rate of interest charged by the

	General Stock of Money	Held in Treasury	Held by Federal Reserve Banks and Federal Reserve	In Circulation Feb. 1, 1921	In Circulation Jan. 1, 1879
Gold coin (including bullion in Treasury).....	\$2,853,480,649	\$427,621,611	\$1,005,907,276	\$960,224,657	\$96,262,850
Gold Certificates.....	269,746,326	22,243,794	155,358,280	304,368,825	21,189,280
Standard Silver Dollars.....	271,511,384	7,836,848	.....	97,720,180	5,790,721
Silver Certificates.....	346,681,016	3,938,348	.....	148,177,905	413,360
Subsidiary Silver.....	3,484,226,195	10,223,811	369,348,520	263,674,536	67,982,601
Treasury Notes of 1890.....	225,938,400	5,927,334	.....	1,604,447	.....
United States Notes.....	719,633,927	22,467,063	.....	342,742,668	310,288,511
Federal Reserve Notes.....	.....	.....	.....	3,104,653,864	.....
Federal Reserve Bank Notes.....	.....	.....	.....	220,911,066	.....
National Bank Notes.....	.....	.....	.....	697,186,864	314,339,398
Total.....	\$8,171,237,897	\$499,358,809	\$1,530,614,076	\$6,141,265,012	\$816,266,721
Population of continental United States estimated at.....	.....	.....	.....	107,389,000	48,231,000
Circulation per capita.....	.....	.....	.....	\$57.19	\$16.92

THE MONEY OF THE UNITED STATES, ACCORDING TO KINDS.

bank on the money it loans is higher than the rate paid by the bank. Thus a bank may pay 4 per cent to a depositor and lend his money at 6 per cent.

In so receiving and handling deposits, the bank serves several purposes. It keeps the depositor's money safely for him, and affords him the use of checks, which are a great convenience. It also accommodates individuals and business concerns who need to borrow money. Business men and corporations depend largely on banks to help finance their business operations. In making loans the bank requires the borrower not only to give his note for the money loaned, but also to furnish some kind of collateral security, such as a life-insurance policy, stock of a corporation, government or municipal bonds, etc. Frequently a depositor borrows money from a bank and draws checks on the amount so borrowed, the bank simply crediting him with the amount as if he had actually deposited so much money. When the depositor's note falls due he must pay it or have it renewed.

Banks cash checks not only on themselves but also on other banks. When a bank cashes a check drawn on another bank, it sends the check on to the bank on which it is drawn for payment. The latter bank charges the check to its depositor's account and remits the amount to the bank which paid the check, or credits such bank if there are accounts between them. As it would be impossible for every bank to have accounts with every one of the thousands of other banks, the custom is for every bank to arrange with a bank in some large city, such as New York or Chicago, to act as its representative in its dealings with other banks in that section. Accounts between the several banks in a city are adjusted through an organization known as a *clearing-house*.

Many banks are organized as *trust companies*, or maintain trust departments, which take care of estates, or act as guardian or trustee for persons requiring such service. A trust company will have one's will written for him and act as his executor after his death. Banks also usually maintain private

safety-deposit boxes or drawers in which the patrons may keep valuables of various kinds.

**207. The Banking Business of the United States.**—One result of the war of 1914–1918 has been that the United States has become the world's banker. Virtually all the nations of the world are now looking to the United States for credit or some other kind of financial aid. According to the report of the comptroller of the currency for 1919, this country holds one-third or more of the world's total supply of gold coin and bullion, and the rest of the world owes to the government of the United States and to our business men an amount equal to more than twice the total stock of gold in all other countries of the world, with a balance of trade immensely in favor of the United States, the total excess of exports over imports during the six years 1914–1919 being \$15,597,658,892, the excess for the year 1919 being \$4,017,441,226.

The banking business of the country has reached colossal proportions, enormously increasing in the past few years. There are three main classes of banks: (1) national banks, operated by private individuals under charters granted by the United States; (2) state banks, operated by private individuals under state charters; and (3) Federal Reserve banks, established under the Federal Reserve Act of 1913. In 1919 there were 7,865 national banks, 21,298 state and private banks, and 12 Federal Reserve banks in the United States.

**208. National Banks.**—In 1791 Congress chartered the Bank of the United States, the charter of which expired in 1811 and was not renewed. In 1816 a second Bank of the United States was established, whose charter expired in 1836. These banks figured largely in the early financial and political history of the country. After the passing of the second bank Congress made no further attempt to establish a bank for the government, but by an act of 1863 authorized private individuals to establish national banks, and on depositing United States bonds with the comptroller of the treasury, to issue bank-notes thereon up to an amount not exceeding 90 per cent

of the bonds. The main object of this act was to create a market for United States bonds.

This statute, with various amendments, has been continued in force. National bank notes are issued under the direction of the comptroller of the currency, and, being secured by government bonds in addition to the other resources of the bank, are always good whatever may be the financial condition of the bank.

National banks are regulated by federal statutes and are inspected by federal inspectors. On June 29, 1918, the total deposits of the national banks aggregated \$14,021,609,000, and the loans and discounts, \$9,620,402,000. There are about 20,000,000 depositors in national banks. The national banks have been well managed, especially of late. Failures are now almost unknown.

**209. State Banks.**—The states have concurrent power with the United States to charter banks, and for some reasons state banks as business enterprises are more attractive than national banks, being in some respects more profitable, and also because they are not subject to federal regulation and inspection. On July 1, 1918, there were in the United States and the island possessions over 21,000 state banks and loan and trust companies and private banks, or more than double the total number of national banks. State banks do not issue circulating notes, being prevented from doing so by a prohibitive federal tax. The total deposits in state, savings, and private banks, and loan and trust companies, in 1918, were over eighteen and one-half billion dollars.

The state governments maintain banking departments for supervising the banking business in the state, and through the co-operation of the various state banking departments the federal comptroller of the currency is enabled to compile and publish statistics showing the resources and liabilities of all the banks in the country, both state and national. In 1919 there were forty-five failures of state and private banks and trust companies throughout the United States, or about one failure for every 500 banks.

**210. The Federal Reserve System.**—The financial system developed under the National Banking Act of 1863 and its amendments was supplemented by the establishment of the Federal Reserve System under the Federal Reserve Act of 1913. The object of this act was to improve the existing system by the decentralization of the money power by establishing Reserve banks in convenient commercial centres throughout the country, and also by providing a more elastic currency. It was intended by this means to afford better banking facilities to the country and to reduce the danger of panics. The establishment of the new system was timely, for the war with Germany, which came soon after, required financial operations on a scale never before known, and to the new system was perhaps largely due the soundness of the financial condition of the country throughout the war.

The system is under the general direction of the Federal Reserve Board, consisting of seven members, including the secretary of the treasury and the comptroller of the currency, who are members *ex officio*, and five members appointed by the President and Senate. The country is divided into twelve districts, in each of which is established, in a reserve city, a Federal Reserve bank. The reserve cities are Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, Kansas City, Dallas, and San Francisco. Branch banks have also been established in a number of cities. The stock of the Federal Reserve banks is all held by other banks, every national bank being required to become a stockholder in the Federal Reserve bank of the district in which it is situated. State banks which comply with certain requirements may also become member banks. A Federal Reserve bank has no direct dealings with the public, but deals only with banks, having been well described as a "bank of banks." The minimum capital of a Federal Reserve bank is \$4,000,000, and the capital of the larger banks is several times this amount.

The Federal Reserve Board issues Federal Reserve notes, which are an important part of the national currency. Federal

Reserve notes are obligations of the United States, and are receivable by all national and member banks and Federal Reserve banks, and for all taxes, customs, and other public dues. They are redeemable in gold at the Treasury Department, or in gold or lawful money at any Federal Reserve bank. These notes are issued to Federal Reserve banks on the security of gold or other lawful money and commercial paper. The Federal Reserve banks also issue notes on the security of United States bonds and other obligations.

**211. Postal Savings Banks.**—The Postal Savings System was established by act of June 25, 1910, as a part of the post-office service. By the use of postal savings stamps and cards, deposits of one dollar and multiples thereof may be made in post-offices designated as postal savings-depositories. The main object of the system seems to be the promotion of thrift among the people. On June 30, 1919, the number of depositors in postal savings banks in the United States and insular possessions was 565,509, and the total amount of deposits \$167,-323,260, the average deposit account being \$295.90.

**212. Federal Farm Loan Banks.**—By an act of July 17, 1916, known as the Federal Farm Loan Act, Congress established a federal land banking system for the purpose of making loans to farmers upon more favorable terms than they could ordinarily secure. The administration of the statute is under the direction and control of the Federal Farm Loan Board, composed of five members, including the secretary of the treasury as chairman. Under the general supervision of this board is a Federal Farm Loan Bureau, which is charged with the execution of the act.

The United States is divided into twelve Federal Land bank districts in each of which is established a Federal Land bank. These banks are located at Springfield, Mass., Baltimore, Columbia, S. C., Louisville, New Orleans, St. Louis, St. Paul, Omaha, Wichita, Kan., Houston, Tex., Berkeley, Cal., and Spokane, Wash., the districts being numbered in the order in which these land bank cities are named. Loans are not

usually made by these banks directly to the farmers, but through national farm loan associations organized by farmers under the statute, or through incorporated banks, etc., chartered by the states, as agents of the land banks, or through joint-stock land banks organized by individuals under the provisions of the statute. Loans are made on the security of first mortgages on farm land, at a rate not exceeding 6 per cent, in sums of not less than \$100 nor more than \$10,000 to any one person, and only for the purchase of land, or to provide for equipment, operation, etc., of farm lands. The loans run for not less than five nor more than forty years. On October 31, 1919, the total amount of mortgage loans was \$271,317,816.

### Questions

1. What are the provisions in the federal Constitution relating to money? What gives value to a one-cent piece? to a gold eagle? to a silver dollar?
2. Why is gold the most suitable substance to use as a standard of value for money? What is meant by the free coinage of a metal? What is bimetallism? coinage ratio? market ratio?
3. What is Gresham's law? If there is free coinage of both gold and silver at a ratio of 16 to 1, and the market ratio is 15 to 1, what money will be in circulation?
4. Trace the history of the coinage of silver into dollars from the beginning to 1921.
5. What mints are now coining money in the United States?
6. What kind of paper money was in use in this country before the Civil War? What are "greenbacks"? are they still in use? how are they secured? Name the different kinds of paper money now in circulation. Examine some bills and tell which kinds of money they are.
7. What is legal tender? What money is now legal tender?
8. What are the main functions of a bank? Explain how banks help business and industrial enterprises.
9. What kinds of banks are there in this country? Name some of the banks in your town or county. Are they national banks or state banks? Do they issue paper money? If a bank fails, does this destroy the value of notes issued by it?
10. What is the Federal Reserve System? Name the Federal Reserve bank nearest to you.
11. What is a postal savings bank? a farmers' loan bank?

## CHAPTER XXIII

### PUBLIC EDUCATION

**213. Democracy and Education.**—Under an aristocratic or autocratic system of government, the general education of the people is not only unnecessary from the standpoint of the government but may be positively undesirable. If the masses of the people are educated so as to be able to understand their rights and to appreciate the real nature of the government under which they live, autocracy is impossible. No intelligent and informed people of any spirit will tamely submit to a government run in the interest of the ruling classes without regard to the rights and wishes of the people. It is to the advantage of the rulers in such a system to keep the people in ignorance, or at least, as was done in the German Empire, so to direct their education as to make them believe that autocracy is the best form of government for them. From his point of view Sir William Berkeley, the royal governor of Virginia, was right when he wrote in 1671: "I thank God there are no free schools in Virginia nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience and heresy and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both."

But if autocracy cannot survive with the right sort of popular education, successful democracy is impossible without it. Government cannot be maintained by the people unless they are sufficiently educated to maintain it. It was not an accident that democracy did not obtain a foothold in the world until the education of the people became fairly general. Two hundred years ago illiteracy was the rule in Europe, and real democracy did not exist. The most serious obstacle to the

establishment of democracy in Russia to-day is the almost universal illiteracy of the common people. Without general primary education, at least up to the point necessary for the intelligent exercise of the right to vote, real democracy cannot be successfully maintained or developed. If the democratic system of government is to endure, the people must be educated.

Public education is therefore not only a proper but a necessary function of the state, unless the people will educate themselves without government aid. But this they will not do. Many persons have their children educated in private schools, but the great mass of the people either will not or cannot do so, and until the establishment of the free public school system in this country, illiteracy even in the United States was common. Moreover, even when free schools were provided many parents would not send their children to school, and it has been found necessary to pass compulsory education laws to get the children into the schools. Many of the people are still too ignorant to appreciate the importance and value of education.

**214. The Public School System.**—The subject of education is left by the federal Constitution entirely to the states,\* and each state has its own public school system. In most of the states there is a department of public instruction at the head of which is a superintendent or a board of education or both, with general control over public education in the state, but in most respects the establishment and regulation of public schools is usually left to the local authorities of the several counties, districts, and towns or cities. Each of these local

\* There is a United States Bureau of Education, in charge of a commissioner of education, which is a bureau of the Department of the Interior. This bureau has no control whatever over the public schools of the country, but it performs a very useful service in collecting and publishing statistics and other information showing the progress of education in the country, and in this way aids the state and local authorities in solving their school problems. The commissioner issues an important annual report and miscellaneous publications on educational subjects.

school divisions has its own superintendent or school board. The plans of central control as well as the details of administration vary considerably in the several states. The general rule is probably in favor of local self-government in school matters, the schools being also supported mainly by local taxation. In order, however, to bring the schools throughout the state to approximately the same standard of efficiency, compliance with the requirements of the state authorities may be made a condition of receiving aid from the state treasury. In some states the state authorities have practically complete authority over the entire school system of the state.

At the time of the establishment of the government of the United States, the people of this country were probably better educated than those of any other country, and yet perhaps more than half of them could not read or write. In the New England colonies in early times some public free schools were established, but there was no general system of state education until the nineteenth century was well advanced, and public free schools did not become universal until after the Civil War. Now in all of the states good primary and secondary schools are maintained at public expense. About 20,000,000 pupils are enrolled in the public graded schools in the United States, and probably 2,000,000 more in the public and private high schools. As a result of the work of the thousands of public and private schools, illiteracy has greatly decreased in this country, though still about 7 per cent of the population above the age of ten years cannot read and write. The investigations made in connection with the registration of men in 1917 and 1918 for military service revealed a shocking number of able-bodied young men who could not even sign their names. This shows that much still remains to be done in the education of our people.

The foundation of the public school system is, of course, the common or elementary school. The course of instruction extends through seven or eight years or "grades," the children being usually about six or seven years old when they enter the

first grade. More than half of those who enter the first grade drop out before completing the full course in the graded school. In most of the states, however, compulsory education laws have now been enacted which require children to be sent to school by their parents until they have reached a certain age, varying from twelve to fourteen years in the different states. In many parts of the country in the poorer rural districts there is only the common school, and this not covering all of the grades and open for only a few months during the year. Great improvement is being made, however, in these more backward districts and the schools are constantly becoming better.

In all towns and cities and many country districts there are public high schools offering courses of from two to four years. Less than one-tenth of those who enter the graded school enter the high school. As in the case of the graded schools, the educational standards of the public high schools vary greatly in the different states and communities, but the course offered in the best high schools will compare favorably with that formerly given in American colleges. Graduation at a four-year high school is now generally required of all students entering college.

**215. Religion in the Public Schools.**—In a number of states constitutional provisions prohibit the appropriation of public money for the support of sectarian schools, or forbid sectarian instruction or control in any of the state schools. The provisions vary considerably in the different states, and the decisions of the courts in construing the various provisions are not entirely harmonious. It is generally held that the reading of selections from the Bible, without comment, does not violate any of the constitutional provisions. As to whether the reading of the Bible and the offering of the Lord's prayer constitute a violation, the decisions are in conflict. Some courts hold that they do, and other courts that they do not. The holding of religious exercises with the singing of hymns ordinarily used in denominational worship has been held unlawful, likewise the use of the Bible as a text-book. But the use of books con-

taining selections from the Bible is unobjectionable. Probably the propriety and lawfulness of any particular religious exercise in the public schools will depend a good deal upon local conditions. In no case, however, should the giving of sectarian instruction or the use of sectarian forms of worship be permitted.

**216. State Universities.**—For the majority of American citizens school education ends with the graded school; only a fraction of the population graduate at the high schools, and the percentage of those who enter college is very low, indeed. It would seem, therefore, hardly necessary or even proper for the state to maintain schools of collegiate rank. Nevertheless, in most of the states there are colleges or universities owned and controlled, and at least partially supported, by the state. In general character these institutions do not greatly differ from privately endowed schools of higher education. The better-known state universities are largely attended by students from other states. For state students tuition in state institutions is usually free or at a lower rate than for students from other states.

At the state universities, besides the usual cultural college courses, professional instruction in law, engineering, medicine, etc., is given. Several of the more progressive state universities conduct extension departments by which, through publications, lectures, and correspondence courses, education is taken to the people in their homes and places of business or labor. The University of Wisconsin has been a leader in this work, as well as in other lines of state service. In this university, and in some others, short practical courses in agriculture, dairy-ing, etc., are given which are largely attended by farmers and others interested. In this way farming and other pursuits in the state are put upon a more scientific and profitable basis. Where the state university thus undertakes to serve the people along lines the value of which any one can see, there is generally no difficulty in getting the necessary appropriations from the state treasury.

**217. Vocational Training.**—Schools for the training of men and women for the professions of law, medicine, engineering, etc., have long been a part of the state educational systems, but until quite recently no provision was made for the special vocational training of the great masses of the people whose



OUR AGRICULTURAL SCHOOLS ARE GIVING GREAT ATTENTION TO THE FEEDING AND HOUSING OF SWINE.

school education ended with the common or high schools. Meanwhile, the introduction of machinery in industry and modern methods in business has emphasized the distinction between the skilled and the unskilled worker, placing the latter at a great disadvantage in the struggle for a living. At the same time the standards of living have been raised for all the people so that the supplying of what are now regarded as the ordinary necessities of life is a serious problem for the untrained workman.

There will always be need for great numbers of manual laborers, and of these there is usually an ample supply. No system of government or of social or economic adjustment can



EXHIBITION OF CATTLE HELD BY THE AGRICULTURAL COLLEGE OF ONE OF OUR UNIVERSITIES.

make all men equal or prevent the great mass of the people from occupying an inferior position in the community. In a democracy, as well as in an autocracy, there will be classes of society; the difference is that under an aristocratic system the classes of society are fixed, there being almost no chance for a member of a lower class to rise to a higher class, while in a democracy there are no permanent classes, it being possible for the humblest citizen to rise to the highest position in the state. In an aristocracy social position is mainly a matter of inheritance, in a democracy it is mainly a matter of individual worth.

But for an individual to rise from a lower to a higher position requires the development of his faculties. The "open road" of opportunity along which one may advance from the lowest to the highest positions in industrial, business, and public life is education and training. The unskilled workman must always occupy the lower positions. It is the glory of American democracy that many of our foremost citizens have risen from the lowest to the highest places by the sheer force of their character, ability, and industry, and under the simpler conditions of earlier times they needed very little help from the public.

But the time has past when one may reasonably hope to rise very high merely by self-education. Even an Abraham Lincoln could hardly become a great lawyer to-day by studying a few law books by the light of an open fire. It is almost impossible now for a lawyer to rise to distinction in his profession without thorough preparation in a law school preceded by a college education. And so it is in all the other occupations; in each there must be thorough preparation varying with the nature of the occupation. This training can hardly be obtained except by systematic instruction in a school or otherwise. It is to meet this need that the public educational system has lately been extended so as to include vocational and industrial training for the young.

Various plans of vocational training are being tried out. In some of the states industrial education is in charge of special boards or officials. Usually instruction in the ordinary

branches is given for a part of the time, while the rest of the time is devoted to practical instruction or work in shops, factories, etc. Arrangements are made with manufacturers and business men by which pupils may be employed for a part of the time while going to school. Thus they combine theoretical instruction with practical experience, and at the same time earn



COMMUNITY MARKET IN A SOUTHERN COUNTY.

something toward paying their expenses. This is a revival of the old apprentice system under new conditions. Through modern industrial education the pupil is given the opportunity to develop his mental faculties and to qualify himself to earn a living at the same time.

**218. Agricultural Education.**—Instruction in agriculture is given in many of the public schools, and higher agricultural education is given in agricultural colleges. The federal government aids in this work by appropriating \$50,000 a year for each of the states to be used in agricultural education in state colleges. Experimental farms, etc., are maintained at these agricultural colleges, and scientific methods of farming, dairying,

fruit-raising, etc., are taught. Many farmers attend short courses at these institutions during the winter months. Experts or "demonstrators" are employed in many of the rural districts to advise farmers as to the best methods of farming. Through the Department of Agriculture of the federal government much valuable information is furnished to farmers and others interested in making the best use of the soil. Probably no class of workers receive so much help in the way of advice and instruction from the state and federal governments as the farmers.

**219. Normal Schools.**—Good schools require good teachers, and most of the states make special provision for the training of public-school teachers. Teachers of the higher grades are often graduates of the best colleges and universities, but the great majority of teachers are not college graduates. A great many, however, attend normal schools, which are schools specially for training teachers. Besides private normal schools, there are in this country over 200 public normal schools, in which more than 100,000 students are enrolled. Normal courses are also given in many high schools. Summer normal institutes are common for the further training of teachers already engaged in public-school work. State education laws sometimes require all public-school teachers to attend or have attended normal courses. The leading state and privately endowed universities have schools of education and pedagogy for the benefit of persons expecting to make teaching a profession.

**220. Public Libraries.**—Carlyle says: "The true university of these days is a collection of books." One of the most potent factors in education in any community is a good public library. Many public schools have small libraries, and in most of the larger cities there are fine public libraries maintained by the city authorities. Modern librarians are trained with special reference to assisting the public in the use of books, and in the larger public libraries material will be found for the study of almost any subject. Books may usually be either consulted in the library building or, with some exceptions, taken out for

reading elsewhere. Some libraries maintain travelling departments, the books being sent out to readers away from the city, the library being thus literally taken to the people.

### Questions

1. Why is general education especially important in a democracy? From his point of view was Governor Berkeley right in thanking God that there were no public schools in Virginia?
2. Is the education of the people a state or a federal function? Do you think that all of the public schools in the United States should be under the control of and supported by the federal government?
3. Who is the superintendent of schools in your town or county? Name the members of the local school board.
4. Is there a state university in your state? If so, do students from the states pay the same tuition as students from other states?
5. Is the chance for an uneducated man or woman as good now as it was a century ago? Do you think Lincoln would have gone to college if he had had the chance?
6. What is being done in your state to educate persons making a living on the farm?
7. Is there a public library in your town? Do you have a library in your school? Have you a good dictionary or encyclopædia in your home?

## CHAPTER XXIV

### COMMERCE, BUSINESS, AND COMMUNICATION

**221. Commerce and Its Regulation.**—Commerce is a very comprehensive term. It includes the purchase, sale, and exchange of goods, wares, merchandise, and commodities of all kinds, and the transportation of persons and property. Its chief elements are buying and selling and transportation. Commerce deals with the things which are produced by the various agencies of production, such as agriculture, mining, fishing, lumbering, and industries of all kinds. All the agencies for the exchange and distribution of commodities come under the head of commerce. “A prosperous commerce,” said Alexander Hamilton, “is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth; and has accordingly become a primary object of their political cares.”

Commerce is either domestic or foreign. Domestic commerce is that carried on within the United States, and may be either *interstate* commerce or *intrastate* commerce. Interstate commerce is that carried on between states; intrastate commerce is commerce wholly within the borders of one state. Foreign commerce is commerce between this country and foreign countries. The regulation of commerce is one of the most important functions of the government. The federal Constitution provides that Congress shall have power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” The power to regulate intrastate commerce belongs exclusively to the states, which have passed a great many statutes on the subject.

**222. Interstate Commerce.**—Congress has no more important power than the power to regulate interstate commerce.

One of the main reasons for the adoption of the Constitution was to protect interstate commerce from hostile and burdensome state legislation by placing its control in the hands of Congress. The power to regulate interstate commerce in all matters of general interest is exclusively in Congress, and any state law constituting a burden on commerce and injuriously affecting the people of other states is void.

Up to about forty years ago Congress made very little use of its power to regulate commerce. Such laws as were passed on the subject related mostly to shipping and navigation, land commerce being left unregulated. But beginning with the Interstate Commerce Act of 1887, Congress took up actively the regulation of interstate commerce by land as well as by water, and many important statutes on the subject have been passed. At present no power of Congress is more actively employed than the commerce power. Regulation of commerce by Congress may take a wide range. Among other things, it has included the enactment of navigation laws, and laws regulating the equipment of railway-trains, the hours of service of railway employees, the liability of common carriers to shippers and employees, railway rates, bills of lading, etc. Under the commerce power Congress may charter transportation companies, and may construct or authorize the construction of highways, bridges, railroads, canals, telegraph and telephone lines, etc., upon, over, and by means of which commerce is carried on, and may develop and improve harbors, rivers, and other natural waterways used in commerce. Authority for the construction of roads and other highways may also be found in the war powers and in the power to establish post-roads. The most conspicuous instance of the exercise of this authority is the construction of the Panama Canal.

The power to regulate commerce includes the power to prescribe to some extent what may be shipped, and the use to which the facilities of commerce may be put. Since no business or industry can be conducted on a large scale unless its products can be marketed in the country at large, Congress is able, under

the commerce power, to suppress certain kinds of business altogether by excluding its products from interstate commerce, or to require commodities offered for transportation to conform to reasonable standards prescribed by it. In this way Congress to a considerable extent exercises ordinary police power in regulating business and manufacture within the states, doing indirectly what it has no power to do directly. Congress has prohibited the interstate shipment of lottery tickets, impure and adulterated or misbranded foods and drugs, intoxicating liquors, prize-fight films, and various other objectionable articles, thus putting an end to business in such articles. Such articles have been described as "outlaws of commerce." All such may be excluded from interstate commerce.

**223. The Interstate Commerce Acts.**—The Interstate Commerce Act of 1887 was the first comprehensive statute passed by Congress for the regulation of railroads. This act and its amendments establish the Interstate Commerce Commission, now consisting of nine members, with large power of control over the railway and common-carrier business of the country. Among the acts amendatory of or supplementary to this act may be mentioned the Elkins Anti-Rebate Act (1903), the Hepburn Act (1906), the Mann-Elkins Act (1910), and the Physical Valuation of Property Act (1913), for the valuation of the property of carriers engaged in interstate commerce. The regulation of railroads has proved to be a very difficult matter and new statutes are passed from time to time.

Besides the Interstate Commerce Commission there is the Federal Trade Commission, composed of five members, which was established in 1914. Its principal functions are to enforce the federal laws against "unfair methods of competition in commerce," and to conduct investigations and make reports in respect to commercial corporations and violations of the anti-trust acts. In 1920 Congress established the United States Railway Labor Board, consisting of nine members, of whom three represent the employees and subordinate officials of the carrier, three represent the carriers, and three represent the

public. This board has jurisdiction to hear and adjust disputes between the carriers and their employees involving grievances, rules, working conditions, wages, etc.

**224. Foreign Commerce.**—The regulation of foreign commerce is exclusively in the hands of Congress. Direct regulation consists mainly in the enactment of laws dealing with navigation and shipping. Indirectly foreign commerce is to some extent regulated by the tariff laws. Congress has, it seems, full power to determine what may or may not be brought into this country from abroad, and also to prohibit exportations from the country when necessary, as by laying an embargo as a war measure. In time of war trading with the enemy nation may be prohibited. For the promotion of foreign commerce, commercial treaties are made with other nations, and consular officers of the United States are stationed in all seaports and other important towns of foreign countries to look after the commercial interests of this country with a special view to promoting foreign trade. The immigration laws are regulations of foreign commerce. The protection of the United States from plant pests imported from abroad is another subject of regulation, unhappily delayed until after incalculable damage had already been done.

**225. Some Aids to Commerce.**—The federal government maintains several important departments or agencies in aid of commerce, especially by water. The Coast-Guard, formed in 1915 by a combination of the former Revenue-Cutter Service and Life-Saving Service, operates under the Treasury Department in time of peace, and under the secretary of the navy in time of war, or when the President shall so direct. Its principal duties are: assisting vessels in distress and saving life and property; destroying or removing wrecks, derelicts, and other floating dangers to navigation; protection of the customs revenue; enforcement of laws relating to quarantine and neutrality; enforcing the navigation laws, and the like. It renders an inestimable service to commerce.

The Weather Bureau, which belongs to the Department of

Agriculture, is an important agency whose work is familiar to all. This bureau forecasts the weather, issuing storm warnings and displaying weather-signals; gauges and reports the condition of rivers; maintains and operates seacoast telegraph-lines and collects and transmits marine intelligence for the benefit of commerce and navigation; reports temperature and rainfall conditions; and takes and records observations showing the climatic conditions of the United States. The manifold services of this bureau are valuable not only to those engaged in commerce but to the population generally.

The increase in the activities of the federal government in connection with commerce led to the establishment of the separate Department of Commerce in 1913. Its most important bureaus directly aiding commerce are the Bureau of Navigation, Steamboat Inspection Service, Bureau of Lighthouses, and Bureau of Foreign and Domestic Commerce.

**226. Corporations.**—A large part of modern business and industry is carried on by corporations. A corporation is an artificial person created by authority of the government for some specific purpose, having some of the powers of a natural person, but limited in its powers, rights, and liabilities by the terms of the act creating it. The instrument by which a corporation is created is called its charter. A corporation may be organized for purposes of gain, engaging in the ordinary commercial or industrial pursuits, or for purposes of charity, education, recreation, etc. The affairs of a corporation are managed by directors and officers chosen by the members of the corporation. In business corporations membership is represented by shares of stock and the members are known as stockholders.

The main advantages of a corporation are that by this means many persons may combine their resources and act as one person, and also, in business corporations, the liability of the persons conducting the business is limited to a definite amount. If an individual engaged in business fails, all his property may be taken to pay his business debts, but where a corporation fails, only its property, and not the individual property of the

stockholders, is liable for its debts. The stockholder may lose the amount he paid for his stock (and sometimes, by law, that much more), but this is all. This limitation of liability encourages persons to invest money in business enterprises; they may gain, and, if it comes to the worst, they can lose only so much.

**227. Trusts and Monopolies.**—From the corporation developed the modern trusts or industrial combinations. These began to be formed with the beginning of modern production on a large scale about the year 1880. At first, combinations of corporations engaged in the same business were informal, being merely so-called "gentlemen's agreements" to maintain prices and to divide territory between them to save wasteful competition. These agreements were unlawful and, of course, could not be enforced. Nor could corporations combine by holding each other's stock, for the law did not permit one corporation to be a shareholder in another company. Then a plan was devised by which corporations wishing to combine placed their stock in the hands of a board of trustees who were to hold the stock of all the companies and manage the combined business. Such an arrangement created what in law is known as a "trust," and these combinations were therefore called *trusts*. The first of these trusts was the Standard Oil Trust formed in 1879.

The rise of these combinations called forth much anti-trust legislation by the states and such trusts were outlawed. But in 1889 New Jersey passed a statute authorizing the formation of a corporation to hold the stock of other companies, such a corporation being known as a *holding company*. Several other states passed similar statutes, and combinations were now effected in this manner. Some of these combinations, still called trusts though no longer trusts in a legal sense, practically monopolized the business of the country in their respective lines. With plants in various parts of the country and business connections pretty much everywhere, they were able to fix prices almost at will. But because of the interstate character

of their business these trusts were engaged in interstate commerce, and therefore were subject to regulation by Congress, which in 1890, to some extent, met the situation by passing the Sherman Act described in the next section. This has ended trusts of this type.

The third and present form of combination is the corporate merger, in which a single corporation acquires title to the properties of the combining concerns. It is simply a huge corporation. The United States Steel Corporation is the most conspicuous example. It employs 275,000 persons. Whether such a combine is illegal depends entirely upon its business methods. There is no illegality in merely forming a giant corporation. And there are very great advantages in carrying on business and industry on a large scale; in fact, this is a practical necessity under modern industrial conditions. The large producer can command resources and effect economies in production which would be impossible for the small producer. By-products which in a small establishment would be thrown away, because not in sufficient quantity to make it worth while to utilize them, may be worked up profitably in a big plant. With the immense resources of a giant corporation experimental and development work can be carried on which would be impossible in a small plant.

Large-scale production means lower prices for the consumer, provided the producer is held in check by law from taking advantage of the monopoly growing out of his control of production. The remedy for abuse is strict supervision and control by the state or federal government. Every business or industry is subject to regulation, and whenever a person or corporation gains a monopoly of a staple article or a necessary of life, the government may fix the price at a reasonable figure, if it is made exorbitant. So far, price fixing on this account has not been necessary in the case of commodities, but rates and charges of public-service agencies, such as grain-elevators, common carriers, telephone and electric companies, have been so fixed.

**228. The Anti-trust Laws.**—Among the best known of the statutes passed by Congress in regulating commerce are the so-called "anti-trust laws" directed against unlawful restraints of trade and commerce. The first of these was the Sherman Act of 1890, which provided that: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal," and also that: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be guilty," etc. Punishments are prescribed for violations of the act, and the federal courts are given jurisdiction to enjoin such violations. Also any person injured in his business or property is given the right to recover threefold damages from the wrong-doer.

Numerous suits have been brought under this statute against the so-called trusts and other big business combinations, including railroads. Among the most famous suits against combinations of capital have been those against the Standard Oil Company and the American Tobacco Company in 1911, in which these great trusts were dissolved and compelled to re-organize. Combinations of labor have also been brought into court. In the case of the Bucks Stove and Range Company against the American Federation of Labor, a strike to enforce compliance with labor's demands in a dispute about hours of labor, was enjoined as a violation of the statute. In the famous "Danbury Hatters Case," threefold damages, amounting to about \$240,000, were recovered by hat manufacturers of Danbury, Connecticut, from a combination of labor organizations who sought by means of a strike and boycott to compel the complete unionization of the hat factory. These decisions led to the enactment of provisions in the Clayton Act of 1914 considerably restricting the operation of the anti-trust laws and the use of the injunction as applied to combinations of labor.

**229. Banking and Insurance.**—In no lines of business is state supervision more necessary for the protection of the public than in the business of financial institutions, such as those engaged in banking and insurance. Banks are essential to the commercial life of the country, and upon insurance the people rely for security against the financial hazards of death, fire, accident, and disaster. Unless corporations or private persons engaged in business of this kind are solvent and their business is honestly and properly managed, their patrons must suffer loss; and the nature of the business is such that private persons cannot find out for themselves how far these conditions are satisfied, or force those engaged in such business to conduct it properly. State regulation is therefore necessary, and all of the states have passed laws on the subject. These laws usually provide for special officers, such as bank commissioners or insurance commissioners, whose duty it is to see that the state laws governing these businesses are complied with. Since such supervision became universal, loss to patrons from the failure of banks and insurance companies, or the defalcation of their officers, has become almost unknown.

**230. Protection to Investors—Blue Sky Laws.**—The ever-increasing wealth of the people of the United States has greatly enlarged the opportunities for investment. A popular form of investment is in the stocks and bonds of industrial, mining, and other business corporations, and such investments now amount to billions of dollars. But the average small investor usually has no means of determining the real value of stocks and bonds offered for sale and is forced to rely upon the representations of persons soliciting his subscription. This situation offers a rich field for unscrupulous promoters, and millions of dollars are annually lost by the people through investments in worthless stocks and bonds. The federal government is doing something to put an end to this evil through its control of the postal service, but it is to the state governments mainly that the people must look for protection in this matter.

Quite recently the states have entered this field, and steps

are being taken to protect the investor by providing for adequate inspection and supervision so as to prevent the sale of fraudulent or worthless securities to the public. The first law of this kind was the Kansas so-called "Blue Sky Law," passed in 1911. This law requires all persons undertaking to sell stocks, etc., in the state, first to file a financial statement and other information about the business with the proper state authority, and obtain a permit before offering any such stocks, bonds, or other securities for sale. By this means the state has been rid of the sellers of fake or fraudulent securities. Many other states have passed similar laws.

**231. Bankruptcy.**—Many business men and others find themselves unable to pay their debts, that is, they become *bankrupt*. The Constitution grants to Congress power to establish "uniform laws on the subject of bankruptcies throughout the United States." A bankruptcy law is a law which either permits or compels a bankrupt to surrender all his property, with a few exemptions, for the satisfaction of his creditors, and be thereupon discharged of his debts whether paid in full or not. The law works in favor of both the creditor and the debtor. In bankruptcy proceedings the creditor secures the payment of a part at least of his claim, and the debtor is discharged from all his obligations, and enabled to start anew without being harassed by his creditors. His *legal* obligation is fully discharged, but the *moral* obligation to pay all just debts in full remains. Should he afterward become able to do so, an honest bankrupt will pay the unpaid balance of his debts, even though the decree in bankruptcy protects him from being made to do it. When there is no federal bankruptcy law, the states may pass their own laws on the subject. Congress has passed four bankruptcy laws, the present law having been passed in 1898. The United States district courts have jurisdiction of bankruptcy proceedings.

**232. Highways and Transportation.**—Roads have been aptly described as the blood-vessels of the body politic. Poor roads mean poor circulation and resultant stagnation. Much

of the greatness and power of the Roman Empire was due to its magnificent system of roads radiating from Rome to all parts of the empire. It is stated that twenty-nine military roads centred at Rome, which, with their branches, had a total



PART OF THE COLUMBIA RIVER HIGHWAY.

length of over 50,000 miles. So well built were these roads that portions of some of them are still in use. In this country the building of roads was neglected until within recent years. Country roads were often little more than trails, and, since roads were regarded as of merely local concern, what little attention they received they got, as a rule, from the local communities to which they belonged. The idea that the state at

large has any interest in the maintenance and control of roads came later, but this fact is now fully recognized.

General interest in the improvement of through highways seems to have been first aroused about 1885, when the bicycle came into general use, but it is the introduction of the automobile that is mainly responsible for the present great activity in road-building on a large and permanent scale. National good roads associations have been influential in securing the enactment of road legislation by the states. State highway commissioners or boards have been provided for, and hundreds of millions of dollars are being expended throughout the country by the various states in the construction and improvement of roads. In this work the county or other local governments are co-operating. The introduction and extension of the rural postal delivery service has made the matter of post-roads of special importance to the federal government, and in 1916 Congress inaugurated a system of federal aid to states in the construction of roads, and large appropriations are being made to be added to appropriations made by the several states. Besides roads, some of the states have constructed extensive canals, the most important of which is the Erie Canal in New York.

The use of roads and transportation in general is to some extent regulated by state law. The common law provides a system of rules for the regulation of common carriers, and these have been largely supplemented by statutes. Transportation agencies, such as railway and steamship lines, electric lines, and also telegraph and telephone lines, are elaborately regulated. In many states corporation or railway commissions, corresponding to the Interstate Commerce Commission, have been established to administer the law relating to transportation companies and other public utilities. The power of the state is limited, however, to the regulation of intrastate commerce and transportation, since the power to regulate interstate commerce belongs to Congress. The introduction of the automobile has made necessary legislation governing their

use on the public streets and highways. These laws are still in a somewhat experimental stage.

**233. Regulation of Railroads.**—Railroads have long been a favorite subject of regulation by the states. Railroad companies are “common carriers,” holding themselves out to serve the public without discrimination, and all common carriers of whatever description, from the humble wagoner to the great railway and steamship companies, have always been subject to public control. By the common law a common carrier is regarded as a semi-public agency and is held to a higher standard of duty and liability than is established for persons in ordinary occupations. The importance of transportation to civilization justifies a degree of public control over common carriers which would not be necessary or proper over most other persons offering their services to the public.

For many years the state legislatures were very active in regulating railroads, and the statute-books of the states contain many provisions relating to such subjects as stopping trains at stations, keeping ticket-offices open, the equipment of trains, safety devices, cattle-guards, grade crossings, locomotive spark-arresters, and headlights, the qualifications of engineers, freight and passenger rates, etc. Regulations securing better service or lower charges are naturally popular with the people, and this fact, together with a considerable hostility to railroad companies caused by abuses in railroad management, some years ago encouraged legislators to promote their political fortunes at the expense of the railroads. Railway legislation, though in many cases proper, became in the aggregate so burdensome upon the railroad companies as seriously to embarrass the transportation business, especially as most of the principal railways lay in several states and were thus subject to regulation by as many legislatures.

The regulation of railroads by the state has become of much less importance in recent years by reason of the increasing extent to which this subject has been taken over by Congress. Prior to the enactment of the Interstate Commerce Act of 1887



*Courtesy of the American City Magazine.*

**THE PHANTOM CANYON HIGHWAY, COLORADO, BUILT  
ENTIRELY BY VOLUNTEER LABOR RECRUITED  
FROM NEIGHBORING CITIZENS.**

railroad legislation was left almost entirely to the states, but at present most of the important regulation is by Congress. The fact that practically all railroads are engaged in interstate commerce brings them within the commerce clause of the Constitution, and it has been found that interstate and intrastate commerce are so intimately connected with each other—the same tracks and usually the same trains being used for both kinds of commerce—that the regulation of interstate commerce by Congress necessarily involves to a considerable extent the regulation of intrastate commerce at the same time. Such matters as the equipment of trains, rates, hours of service, and the like, are now left almost entirely to Congress.

A conspicuous instance of state regulation is found in the Southern states in the laws requiring separate but equal accommodations on trains and in waiting-rooms for white and colored persons. These so-called "Jim Crow Laws" have been held valid by the Supreme Court where the accommodations are in fact equal. But a state law permitting carriers to provide sleeping-cars, dining-cars, and chair-cars exclusively for white persons without providing similar accommodations for colored persons denies to the latter the equal protection of the laws, and is therefore unconstitutional. The state laws apply only to transportation within the state.

**234. The Postal Service.**—No power of the federal government, except its power to establish a currency, comes so close to the citizen in his every-day life as its power over the postal service. The post-office is the one place in the community that every one goes to, and the postmaster or carrier is the one government official that every one knows. The child buying a post card or a stamp at the post-office is dealing directly with the government of the United States. The postal service is the greatest business enterprise of the government, its annual receipts and expenditures running into the hundreds of millions of dollars. And no department of the government has been more useful to the people or better administered than the Post-Office Department.

The postal powers of Congress are granted in the provision of the Constitution that Congress shall have power "to establish post-offices and post-roads." The national postal service is a continuation of the service established by the British Government in colonial times. Benjamin Franklin, who had been



SORTING PARCEL MAIL IN A U. S. POST-OFFICE.

postmaster-general before the Revolution, became the first postmaster-general of the United States, a fact which is commemorated by the appearance of his portrait on many of our postage stamps. Adhesive postage stamps for prepaying postage were first issued by the government in 1847, though the postmasters of several towns and cities had issued such stamps in 1845 and 1846. The first stamped envelopes were issued in 1853, and the first post cards in 1872. The registration of letters was introduced in 1854, and free delivery in large cities

in 1863. Special delivery service was started in 1885, and rural free delivery in 1887. Postal savings banks were established in 1910, the present parcel post system in 1913, and airplane



MAIL SERVICE BY AIRPLANE.

Loading mail for conveyance between long-distance points.

service on a small scale in 1918. These facts indicate the development of the service.

The rates of postage are prescribed by Congress, and when the long distances in this country are taken into account, our postal rates are probably the lowest in the world. Government mail is carried free, and members of Congress are also granted the franking privilege. Books, etc., printed in raised letters for the blind are also carried free within certain weight limits. Mailable matter is divided into four classes with a

different rate for each; namely: (1) letters, post cards, and other written matter; (2) newspapers and periodicals; (3) miscellaneous printed matter, such as books, circulars, corrected proof, etc.; (4) merchandise and all mailable articles not included in the other three classes. Certain articles are excluded as non-mailable, these being various dangerous, injurious, or immoral articles, or articles to be used for criminal purposes, or treasonable or seditious matter, etc.

The use of the mails for fraudulent purposes is prohibited, and the mailing of post cards or matter upon the outside of which libellous, threatening, or indecent matter is written or printed. If the postmaster-general has reason to believe that the mails are being used to carry on some fraudulent business, he may issue to postmasters a "fraud order" directing them to mark letters addressed to the suspected party "fraudulent," and return them to the senders, and also prohibiting the payment of money orders in favor of such party. In this way many fraudulent businesses have been broken up and the people protected from swindlers. But government officers are not permitted to open sealed mail for the purpose of inspection without a search warrant.

Postmasters are divided into four classes according to their compensation, which is determined by the revenues of their offices. The salaries of the postmasters at New York, Chicago, Boston, Philadelphia, and St. Louis are specially fixed by law. Postmasters of the first three classes are appointed by the President, by and with the advice of the Senate, and hold office for four years, unless sooner removed. Fourth-class postmasters are appointed under civil service regulations by the postmaster-general and may be removed by him.

### Questions

1. What power over commerce is given in the Constitution to Congress and to what commerce does it extend? May Congress determine what may or may not be shipped from state to state? May Congress prohibit strikes on interstate railroads?

2. What three commissions or boards has Congress created for the regulation of commerce?
3. Do you think the government ought to grant bounties to private shipowners to encourage Americans to engage in the shipping business when foreigners can haul goods to and from this country cheaper than Americans can?
4. Name some of the ways in which the government aids commerce by water.
5. What are the two main advantages of a corporation as a means of carrying on a business?
6. What is a "trust"? Is a trust engaged in interstate commerce lawful? Mention some of the advantages of carrying on business on a large scale, as is done by the Standard Oil Company. What if the price of oil were fixed at an exorbitant price?
7. What is the Sherman Act?
8. Why should the banking or insurance business be regulated by the state? How can you find out whether an insurance company is reliable and able to pay losses?
9. What are "Blue Sky Laws" and why are they desirable?
10. What is a bankruptcy law and what is its object? If a man gets a discharge in bankruptcy proceedings without his creditors being paid in full, can he be made to pay the balance due them? Should he pay them if afterward able to do so?
11. Under what clause or clauses of the Constitution does Congress get its power to appropriate money to help the states build roads?
12. Mention some respects in which the states have regulated railroads. Why is regulation of railroads by the state less important than formerly?

## CHAPTER XXV

### LABOR, CAPITAL, AND INDUSTRY

235. **The Factors of Production.**—The object of industry is the production of things needed or desired by man. There are three factors which must combine in production; namely:

(1) *Natural Resources.*—These include all the natural materials, forces, and qualities or activities freely supplied by nature. Such are land; minerals; timber and vegetation of all kinds and its fruits; birds, animals, fish, and other living things useful to man; water; air; in short, all the gifts of nature which may be used in production. There are also the natural forces; the water falling in streams and the wind may be used for power; also steam (the product of heat and water) and electricity. Fire is useful for steam-making and for other industrial processes. The mysterious vital force which causes the seed to sprout and grow and the properties of the chemical elements which make them unite into new and useful combinations are further illustrations. The more we learn about the riches of nature and how to control and use its bountiful gifts, the wider the range and the greater the yield of industry.

(2) *Labor.*—In general labor includes all useful human exertion or activity, whether physical or mental. The manager of a business or factory, a railroad president, an artist, a teacher, a lawyer, a preacher, are all performing labor just as truly as the man who handles a pick or hoe or runs a locomotive. In an economic sense labor is all human exertion employed in production. In modern industrial life, however, a sharp distinction is made between physical and mental labor, and in every-day language only the man who works with his hands is classed as a laborer, the term labor meaning *physical* labor only.

(3) *Capital.*—Capital is that part of the products of past labor which is devoted to the aid of further production. Capital consists entirely of the savings of past labor. It is not merely *wealth*, which includes everything produced or acquired by man; capital is only such wealth as is used for the production of other wealth. Sometimes people think or speak of wealth and capital as being *money*. But money is not synonymous with either wealth or capital. Money is merely a means of exchange. It cannot itself satisfy any human need or assist in production. To do this it must be exchanged for other things which can. What capital does for production is to afford the shelter, protection, tools, and materials required by labor in production, and to feed and otherwise maintain the laborer while he is at work. Either capital or labor without the other is absolutely helpless. The pick in the miner's hands is capital; so perhaps are his clothes, his dinner-pail and his food, the house he lives in, and everything else he uses. In the very beginning the requisites of production are natural resources and labor. Even the ripe fruit growing wild on the tree requires labor to gather it. If one gathers more food than he needs for immediate use, what he saves may be used as capital to feed him while he works at something else; for example, while he prepares shelter or goes after other food. What one saves and uses to enable him to produce more is capital.

The human elements in production fall into two classes: the laborers (including managers) and the capitalists, or those who own or control the capital and natural resources employed in production. Frequently the same person or persons may belong to both classes. A cobbler who runs his own one-man shoe-repair shop is both laborer and capitalist. His tools and materials, together with his clothes, shelter, and food-supply, constitute his capital, and his own hands and brain perform the labor. If he hires an assistant, he becomes an employer of labor as well as a capitalist. On a larger scale, if 500 shoe-factory operatives should organize a corporation, buying all the stock themselves, and establish a factory of their own and

work in the factory, they would be both capitalists and laborers. Every person who owns a share of stock in a mine or industrial plant is a capitalist.

**236. The Relations of Labor and Capital.**—Since the laborer and the capitalist must work together in production, the ques-



A LABORER AND CAPITALIST IN ONE PERSON.

tion arises, what about their relations to each other? Shall there be harmony or strife? Do their interests agree or conflict? The proper adjustment of the relations between labor and capital is the great economic problem of to-day. To reach a just solution of the problem, its exact nature must be clearly

understood. In the first place we find that labor and capital are both interested in the goods they produce, for it is to their joint product that both must in the long run look for their reward. The products of industry are sold to the consumers, and the final return to the producer, whether laborer or capitalist, is the money received from the sale.

Labor and capital should each receive its just share of the proceeds. The return to labor is called *wages*, and the return to capital is *dividends* or *profits*. But both must come out of the products of the industry. The wages of labor are paid in advance out of capital as the work proceeds. Capital's share does not come in until the products are disposed of, and whether capital makes anything depends upon whether the industry is run at a profit. If it costs more to produce the goods (including the amount paid as wages) than they sell for, capital loses instead of gains. This often happens. However it may turn out, the laborer is sure of the wages he receives, but capital makes nothing unless there is a profit. The laborer's return is certain, that of the capitalist is speculative. But without a profit the capitalist will not continue the business. Capital must make a profit or there will be no work for the laborer. Since both wages and dividends must in the long run come out of profits, it is to the interest of both laborer and capitalist that the output should be as large as possible and be produced at the lowest possible cost (other than for wages), so that there will be the more to divide between them. But this is true only provided each gets his proper share of the profits. The big question is, how shall the profits be divided?

Here labor and capital part company. In the division of profits their interests directly conflict. The more one gets the less will be left for the other. As a matter of justice each should receive a share of the profits in proportion to his part in the production of the goods. In this respect there is a difference between the workers themselves. A manager, for example, who by ability and hard work can convert an industry that has been running at a loss into one making a profit of \$100,000 a year, is certainly entitled to a larger share of that profit than

an ordinary workman. There is usually no great trouble in apportioning the compensation of the workers, the big problem is to fix the respective shares of labor and capital.

Capital must receive enough to pay a fair interest on the investment or it will be withdrawn and the industry will close down. But labor must also get its share. It is over this question that the contest between labor and capital has mainly been waged, though other matters, such as hours of labor and working conditions, have also been involved. The ideal way would be for the division to be made by some impartial judge wise enough to determine the just shares of both parties. In practice the division is made by those who manage the business, and these are chosen by capital and not by labor. Naturally labor has not always gotten its full share. This injustice has led to efforts by laborers to enforce a just division. But since in modern industry the individual workmen are helpless in competition with their employers, they have combined to enforce their demands.

**237. Labor Unions and Employers' Associations.**—In former times if a workman wanted a job he could go to the prospective employer and arrange with him the terms of employment to their mutual satisfaction. Employer and employee stood upon pretty even terms. Nothing like this happens in modern industry. The employer, in most cases, is a corporation, governed by a board of directors who appoint officers or managers to run the business. The workmen never meet and rarely even see the directors or higher officers of the corporation, but work directly under foremen or bosses, who hire them, perhaps fifty or one hundred at a time, on terms fixed by those higher up. One workman by himself counts for nothing to the corporation, and he must accept the terms offered or go without work. But work he must have or he and his family will suffer. And what is true of one workman is equally true of thousands, so long as they remain unorganized.\*

\* "The increasing use of machinery, although vastly more efficient than the hand labor which it has replaced, makes all productive operations more and more dependent upon the possession of capital, on the ability

This helplessness of the laborer is overcome by the labor union, which is an association of workmen. Even a powerful corporation must listen to the demands of a union of hundreds or thousands of workmen. Every important industrial occupation now has its trade-union, organized on a local, state, and national scale. Acting through representatives they arrange by "collective bargaining" with the employer a "trade agreement" covering the terms of employment. The substitution of collective bargaining for individual bargaining puts the employees on more nearly equal terms with the employers. Thus, acting as a unit, workmen are often able to enforce their demands.

The most prominent labor organization in this country at present is the American Federation of Labor. This is a general federation of trade-unions covering the entire country. It comprises over 100 trade-unions, including most of the industrial occupations, and has over 4,000,000 members. It is a well-organized and influential body and, since its organization in 1881, has been very successful. One reason for its success has probably been its adherence usually to the policy of keeping out of politics. Outside of the American Federation of Labor are several important non-federated unions, such as the several unions of railway employees, the best known of which is perhaps the Brotherhood of Locomotive Engineers.

To some extent matching the labor organizations there are numerous employers' associations. In 1903 a large number of these were federated in the Citizens' Industrial Association of America. This is now included in the larger organization, the National Council for Industrial Defense, formed in 1907.

to purchase machines, premises, etc., and to forego the prospect of immediate reward for the sake of future profit. In such a condition of things the isolated laborer has nothing whereon to subsist except his labor power, which he must sell as best he can to the highest bidder. In the nature of things he cannot receive less for it than what will enable him to barely exist, but anything over and above this will depend on the bargain he is able to make with his employer."—Leacock, "Elements of Political Science," p. 372.

Employers' associations have not as yet occupied much place in the public mind.

**238. Industrial Warfare and Its Methods.**—When employers and employees are unable to settle their differences by agreement they resort to industrial warfare. The main



A 14,000-TON HYDRAULIC PRESS FORGING A HEAVY OPEN-HEARTH STEEL PLATE IN A LARGE STEEL-PLANT.

weapons of the employee are the *strike* and the *boycott*, and those of the employer are the *lockout* and the *blacklist*. A strike has been defined as "a cessation of work by a group of employees by preconcerted agreement for the purpose of enforcing a demand concerning the conditions of employment." \* Usually the strike concerns conditions of the strikers' own employment, but sometimes employees who are themselves perfectly satisfied go on a strike out of sympathy for a strike in some other establishment. By such a *sympathetic strike* they hope, through the influence of their own employer, or by

\* Groat, "Organized Labor in America," p. 161.

the effect of their strike upon the general condition of the industry, to contribute to the success of the other strike.

The causes of strikes are numerous and several causes may contribute to the same strike. Sometimes for the sake of enlisting the sympathy of the public, the strikers may profess one grievance when their real reason for the strike is something else which the public might not approve. It is not always easy for the public to find out the real cause of a strike, and its sympathy may, therefore, be sometimes misplaced. This point is important, for without the support of public opinion a strike in the more important employments, such as coal-mining and transportation, is almost sure to fail. In case of a general strike or threatened strike both sides usually seek to justify themselves with the public. The most important causes of strikes are those growing out of questions of wages, hours of labor, and the recognition of unions. Another prominent cause is the demand of the unions that employers shall employ only union labor, that is, shall adopt the "closed-shop" policy as opposed to the policy of the "open shop," according to which laborers are employed without reference to whether they are members of unions or not.

Sometimes, to reinforce the strike, employees resort to the boycott, which has been variously defined, but which consists essentially in an attempt to secure concessions from employers by stopping the sales of their products. "In its simplest form it consists in the laborers themselves refusing to purchase and in inducing those who are in active sympathy with them to do the same. In its more complex form it takes on a specific organization to accomplish the result by bringing pressure to bear upon other employers to induce them to withhold business relations until the issues in dispute are settled."\* Various methods have been used to make boycotts effective, including intimidation, force, and violence. Courts have held boycotts unlawful when objectionable methods have been employed. In general, while simple strikes by workmen to bring about

\* Groat, "Organized Labor in America," p. 245.

an improvement in their own condition are held lawful when peaceably conducted, boycotts have usually been regarded as unlawful. A feature of the boycott is the publication of an "unfair list" of employers with whom the public is warned or urged not to deal. Of a milder sort is the "fair list" of approved employers. Similar to the latter is the use of the "union label" on the products of approved establishments.

To meet a strike an employer may hire other workmen in place of the strikers if he can get them. Strikers frequently try to prevent persons so employed from going to work, and so long as they use mere persuasion for this purpose, this is lawful. But they have no right to use violence, as by "picketing" or stationing men about the works to prevent others by force from going to work. Such methods frequently lead to bloodshed and disorder, especially when employers introduce professional "strike-breakers" or workmen from outside. Violent strike methods, whether consisting of personal attacks or destruction of property, are unlawful and may be punished or prevented by injunction. Sometimes the militia and even the United States troops have been called out to suppress disorder attending strikes.\* The employer's weapon most nearly corresponding to the strike is the *lockout*. A lockout is simply the closing of the shop or the shutting down of the works in order to bring the workmen to terms. Like the strike, it involves the cessation of work; the difference is that in the lockout the employer and not the employee takes the initiative. Sometimes the employer simply anticipates a threatened strike by a lockout. Lockouts have sometimes been described as

\* In 1894, in order to force an adjustment of a dispute between the Pullman Palace Car Company of Chicago and their striking employees, the American Railway Union, of which Eugene C. Debs was president, called a sympathetic strike of the railroads. Railway traffic was at once interrupted in states throughout the West and Southwest, and the running of mail trains was obstructed. The federal court at Chicago enjoined the leaders of the Railway Union and all others from interfering with the running of trains, and in support of the injunction and to suppress disorder President Cleveland sent United States troops to Chicago.

"defense strikes," strikes by employees being "attack strikes." Corresponding to the employees' "unfair list" of employers, the employers may publish a "blacklist" of workmen against whom other employers are warned.

**239. The Public and Industrial Warfare.**—Until quite recently the frequent cases of strife between capital and labor were looked upon as matters which concerned only the immediate parties and not the public at large. But within the past few years several conspicuous strikes or threatened strikes in occupations of vital interest to the country have sharply raised the question, whether persons engaged in the great basic industries and in transportation and other forms of public service, shall be permitted to bring inconvenience, suffering, and disaster upon the country by interrupting the regular operations and service by industrial strife? In 1916, when conditions in the country were somewhat critical, the Railroad Brotherhoods secured the passage by Congress of the Adamson Law, very favorable to railway employees, by the threat of a nation-wide tie-up of the railroads unless their demand was complied with. Then followed the steel strike of 1919 and a threatened coal strike, and a threatened railroad strike in 1921. In the winter of 1919–1920 a strike of the coal-miners in Kansas was kept from bringing hardship and suffering upon the people of that state only through the exertions of volunteer coal-miners responding to the call of the governor for help. Such experiences have awakened the people of the country to what an industrial war may mean to them, and there are signs that the rights of the public are going to be protected without reference to the question which side is in the wrong in the dispute. This means that provision must be made for the peaceable settlement of industrial disputes by public authority. The failure of several serious strikes or threatened strikes in the past five years when public opinion was against the strike, seems to show that strikes seriously affecting the public cannot succeed unless supported by public sentiment.

The public has not been indifferent to the interests of either

labor or capital. For the protection of the laboring classes many statutes have been passed and are being enforced. The courts have always been ready to enjoin the destruction of property by striking workmen. In the interest of both parties, and of the public also, steps have been taken to procure peaceful settlements by mediation and arbitration. Where the parties are unable to settle their differences by trade agreements or otherwise, there are in many states agencies established by law to render assistance. The most important and promising of these agencies are the state boards or commissions for the settlement of industrial disputes. Arbitration, which is the submission of the dispute to an impartial board with power to investigate and make an award, is a common method of settlement, but so far the statutes do not provide for the compulsory submission of disputes to arbitrators or the enforcement of awards. The whole proceeding is voluntary. The statutes are largely experimental. In the Department of Labor there is a division of conciliation, established in 1913, which in the first seven years of its existence has, upon request, given its assistance in over 4,000 industrial disputes.

It is probable that these devices are only stepping-stones toward some regular tribunal similar to the public-service commissions, the Interstate Commerce Commission, or the courts, with full power to adjudicate industrial disputes and render binding judgments. In 1920 the state of Kansas, after the coal strike mentioned above, established a court of industrial relations with substantially such power, and its course is being watched with much interest. There can be little doubt that other states will soon establish some such tribunal with jurisdiction at least of disputes in all industries affected with a public interest.

**240. Protection of Employees.**—It has been claimed that the intervention of the state in factory and workshop has done more than any other government measure, except education, to civilize modern industry. Many laws have been passed by the various state legislatures for the protection of employees

with respect to their health, safety, comfort, morals, compensation, and the conditions generally of their employment. For the health and convenience of employees there are laws requiring ample ventilation and proper sanitary arrangements



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**GREAT RISKS ARE TAKEN BY STEEL CONSTRUCTION  
WORKERS AND SPECIAL PROVISION SHOULD  
BE MADE FOR THEIR PROTECTION.**

and toilet facilities in factories, shops, and stores. Fire-escapes are required also when necessary. Special provision is made for the protection of workmen in peculiarly hazardous callings, such as mining, or occupations injurious to health. The regulations for the protection of employees vary considerably in the different states and new laws are constantly being passed. Legislation of this kind has only recently been passed on any considerable scale and much of it is still more or less experi-

mental. The enforcement of the laws is usually intrusted to special officers or departments of the state government.

**241. Child Labor.**—Children have always been employed in gainful labor, and in former times the apprenticing of children was the regular way of having them taught in the arts and trades. There is nothing wrong in requiring children to work, provided the work is done under proper conditions and is not too hard or too long continued. So long as the work does not interfere with their normal growth and proper education, work is good for children. To say nothing of the necessity among the poor that the children should do what they can toward supporting the family, the proper training of children in habits and methods of industry is invaluable to the children themselves. Child labor becomes an evil only when it interferes with the healthy growth or the education of the child.

Child labor as actually found in industry has, however, been a very great evil. The conditions of child labor in England at the beginning of the nineteenth century were almost unbelievable. Children five, and even three, years of age were put to work in factories and brick-yards. Older children were worked in the coal mines. Thousands of children from the almshouses were sent to the factories practically as slaves. It was found that children could tend machinery in many cases about as well as adults and at much less cost. In 1816 an investigation showed that of 23,000 factory hands examined, 14,000 were under eighteen years of age. Children only six years old were common in all the factories. A day's work for children was twelve and even fifteen hours. Machines never tire and gangs of children followed each other at the machines day and night. No attention was paid to their health or safety. In 1842 one-third of all the employees in coal mines in England were under eighteen years of age, and more than half of these were under thirteen. In 1802 a law was passed limiting a day's work for pauper children to twelve hours. Only twelve hours! Just from six in the morning to six at night. No time for rest or play or schooling. In 1842 the employment of chil-

dren under ten years of age in mines was forbidden. Other relief measures followed and now in England humane factory and employment laws are in force.

In this country the conditions of child labor were never so bad as they were in England. Children were not employed in mines at all, nor employed in other places for such long hours nor at so early an age as in England. But conditions have been bad enough. Thirty years ago children from eight to eleven years of age were sometimes kept at work in factories from eleven to fourteen hours a day. Such children had no chance for proper physical, mental, or moral development. They were sacrificed to the greed of employers and of parents who received the proceeds of their labor. All this is changed. Child-labor laws are now in force in most if not all of the states. The details of the statutes vary, but common provisions are the prohibition of the employment of children below fourteen years of age in factories, mines, workshops, canneries, mercantile establishments, etc., or the employment of children at night, or for more than ten hours a day, and the absolute prohibition of child labor in certain occupations. The age and time limits vary.

In 1916 Congress passed a child-labor law in which it was attempted to regulate child labor by prohibiting the shipment in interstate commerce of the products of establishments employing child labor in violation of the provisions of the act. The law was ostensibly a regulation of interstate commerce, but the Supreme Court held it unconstitutional as not being properly a regulation of commerce but of industry, the regulation of which belongs to the state. In 1919 Congress passed another statute attempting a similar regulation under its taxing power, a prohibitive tax of 10 per cent a year being put upon the products of establishments violating the law. This act also was held unconstitutional as being unauthorized by the Constitution and an interference with the reserved power of the states. The states have exclusive power to regulate child labor.

**242. Women Workers.**—Women have always been engaged in industry to a great extent. Among savage and half-civilized peoples perhaps the greater part of the drudgery, whether in home or field, is usually done by women. Long before the introduction of machinery, in Europe and in this country women workers were found everywhere. Besides doing the ordinary domestic work, such as cooking, housekeeping, nursing, sewing, etc., they operated the spinning-wheel and the loom and engaged in other forms of production. They worked in the home and not in the factory as they do now. There was nothing wrong in this. There is no reason why women should not do their full share of the world's work, as they are doing and have always done. Nevertheless, because of inherent and permanent natural differences between the sexes, the woman worker should not always do the same kind of work, or work under the same conditions, as the man. Custom and law have recognized the differences established by nature in dealing with women workers in modern commercial and industrial life.

So long as woman's work was confined to the home, no problem of community interest arose. A hundred years ago few women were employed outside the home, except as domestic servants or governesses in the homes of others. The modern industrial and commercial revolution has brought about a great change. Woman's work is now largely outside the home. With the development of the public-school system great numbers of women went into teaching, and the majority of public-school teachers are women. Others found employment in stores and offices as clerks, bookkeepers, stenographers, etc. Tens of thousands are employed in shops and factories. A few have entered professional life as lawyers, physicians, architects, and even as preachers.

Only women who work in manufacturing, mechanical, or mercantile establishments are dealt with as presenting a community problem. Along with men workers women have shared in the various improvements in working conditions which have been made in recent years. But it is recognized that their phys-

ical nature and functions call for special regulations not necessary in the case of men. In most, if not all, of the states the number of hours women may be employed is less than that permitted for men; and in many states laws provide that seats shall be provided for women employed in manufacturing, mechanical, and mercantile establishments. The minimum wage laws also generally have special reference to women.

**243. Hours of Labor.**—Many of the states have enacted statutes limiting the number of hours for which workers may be employed in one day in certain callings or in the case of certain classes of workers. These laws are passed under the police power for the protection of the health of the workers. They restrict in a substantial degree the liberty of contract, and their validity, under the due process clause of the Constitution, will depend upon their reasonableness. If the nature of the employment or the physical constitution of the worker is such as to make the regulation reasonably necessary as a health measure, the law is valid; but if there is no such necessity for the regulation as to justify its enactment as a health law, the statute is unconstitutional as depriving the parties of their liberty without due process of law.

One of the first of these laws was a law of Utah limiting the hours of labor in underground mines and in smelters and ore-reducing works to eight hours per day. This law was sustained by the Supreme Court as a health law, longer hours in these callings being deemed prejudicial to the health of the workers. A few years later the court by a vote of five to four held that a law of New York limiting the employment in bakeries to sixty hours a week and ten hours a day was unconstitutional, the occupation of baking not being deemed so dangerous to health as to justify such regulation. This decision attracted much attention and was understood by some to amount to a denial by the court of the power of the state to regulate hours of labor in dangerous callings, whereas in fact the court expressly recognized the existence of this power, but a majority of the judges thought that baking was not a dangerous calling.

In later cases the court has taken a more liberal view as to what callings are dangerous so as to justify regulation. The New York case is practically overruled in a recent case in which an Oregon law of 1913 providing that no person shall be employed in any mill, factory, or manufacturing establishment in the state more than ten hours a day, with certain exceptions, was held valid. It is well settled that the state may impose restrictions upon the hours of labor of women, and several statutes of this sort have been sustained by the Supreme Court. Similar laws are in force limiting the hours of labor of minors, as stated in preceding section.

**244. Wages.**—No general attempt has yet been made by the states to fix the amount of wages that shall be paid for labor, nor would legislation in this line affecting workers generally be desirable, practicable, or constitutional. Quite recently, however, a beginning has been made in several states to secure the payment of a minimum scale of wages to women employees. In Massachusetts a wage commission was recently provided for to make investigation and recommend to employers a minimum scale to be paid, the commission having, however, no power to enforce payment, except through the force of publicity and public opinion. In 1913 Wisconsin passed a law providing that no wage paid to any female or minor employee, except as otherwise provided, "shall be less than a living wage," which is defined to be compensation sufficient to enable the employee to maintain herself or himself in reasonable comfort, decency, and physical and moral well-being. The enforcement of the law is in charge of an industrial commission. Several other states have passed laws similar to those of Massachusetts and Wisconsin.

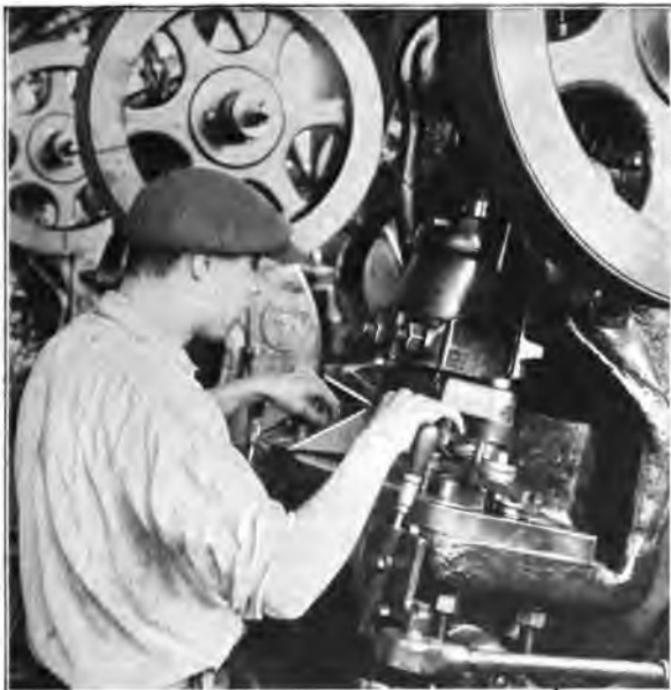
The constitutionality of these laws has not yet been determined by the Supreme Court, but laws of the Wisconsin type requiring the payment of not less than the prescribed scale seem of doubtful constitutionality. The wisdom and justice of such legislation are equally doubtful. While every person is entitled to a fair return for his services, that is, should re-

ceive such wages as he actually earns, no one has a right to a "living wage," or to any wage at all unless he earns it. Neither the government, nor the public, nor an employer owes any man a living. Wages are determined by economic laws, not by legislation, and the only function of the legislature in this connection should be to see that the conditions of industry are so regulated that economic laws may operate naturally. If wages are fixed by law at more than the employee is worth, he or she will not be employed, for employers cannot afford to pay for labor more than the laborer fairly earns.

In a number of states the manner and times of paying wages in certain employments is prescribed by statute. Thus in some cases the payment of wages must be in money and not in store orders and the like, payment in orders sometimes enabling the employers practically to reduce wages by charging high prices for goods sold in the employers' stores. A somewhat similar law requires employers using coupons, scrip, store orders, etc., in paying wages to redeem them in lawful money. Another type of statute requires employers to pay their employees at short intervals, for example, semi-monthly. Such statutes have been held constitutional as being reasonably necessary for the protection of employees in the employments affected.

**245. Industrial Accidents.**—The introduction of machinery in industry and transportation has greatly increased the danger of injury to workmen. Many thousand workmen are killed and hundreds of thousands injured every year by accidents occurring in industrial operations and on railroads. The financial loss to the country through this impairment in national productive power is enormous, but it is upon the individual victims of these accidents and their families that the loss falls in its acute form. With normal wages little above the level of the cost of subsistence, the killing or disabling of the family wage-earner is bound to mean financial suffering or destitution unless some compensation be made. Few laborers are able to save up enough to meet such an emergency. The problem has two phases: the prevention of accidents and compensation for the injury.

Many laws have been passed for the prevention of industrial accidents. Machinery is required to be so protected by safety devices as to prevent workmen from being caught in or otherwise injured by it, and if these were always used or kept in place many accidents would be avoided. A difficulty has been



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**TWO HANDS ARE NEEDED TO RUN THIS STEEL-PRESS, SO LESSENING THE CHANCE OF ACCIDENT TO THE OPERATOR.**

encountered in the unwillingness of the workmen themselves to take the trouble to use the devices. To overcome the carelessness of the workmen, which is often responsible for their being killed or injured, "safety first" campaigns have been conducted by railroad companies and others to encourage care on the part of employees. In recent years the number of industrial accidents has been reduced by the use of safety appliances and a higher degree of care.

**246. Employer's Liability.**—At common law an employer is not liable for an injury to an employee unless it was caused by the fault or negligence of the employer. The whole loss for injuries not so caused falls upon the person injured. Even where the employer was in fault, the workman cannot recover if the accident was of such a nature as to be chargeable to the ordinary risks and hazards of the business, or if it was due in part at least to the negligence of the employee himself or to that of a fellow workman. Thus only where the injury was due to the negligence of the employer, and not always then, can an employee recover, at common law, for injuries received in the course of his employment. Most of the risk is thrown upon the employee.

Even where the law holds the employer liable for the injury or death of an employee, a suit for damages must be brought unless the employer is willing to settle without suit, and law-suits are expensive and uncertain. Damage suits sometimes hang up for years between the trial and the appellate courts. If the employee finally wins, a great part of what he recovers is consumed in the payment of lawyers' fees and other expenses, to say nothing of the uncertainty and long delay.

Under these conditions the economic burden of industrial accidents fell mainly upon the workmen and their families, bringing upon them great hardship and privation. This is neither just nor humane. Relief has recently been attempted by the enactment of the so-called Workmen's Compensation Acts, as explained in the next section.

**247. Workmen's Compensation Acts.**—The Workmen's Compensation Acts have been drawn upon the theory that the loss caused by industrial accidents, whether due to negligence or not, should not fall upon either the employer or the employee, but upon the industry itself. Loss due to accident, like loss caused by fire, or like any expense of production, should be included in the general cost of production. According to this plan a small but certain amount is paid to the workman or his family, and the amount so paid is charged to the cost of pro-

duction and ultimately paid by the consumer. The first effective compensation statutes in the United States were passed by the legislatures of Wisconsin, New Jersey, and several other states in 1911. Since then this type of legislation has swept over the country with amazing rapidity and such compensation acts are now almost universal in the United States, though the statutes of the different states vary as to the employments affected and in other details.

In general the statutes provide for the payment for all injuries according to a prescribed scale without lawsuit, the amount paid being less than would be recovered in a successful suit, but payment being certain, prompt, and practically without cost. The special common-law defenses of assumption of risk, contributory negligence, and the fellow-servant rule are abolished. The administration of the law is usually in the hands of a board or commission, which ascertains the amount to be paid in each case. Under some of the statutes payments are made from a state insurance fund raised by a tax on employers; under other statutes the amount awarded is paid directly by the employer. Employers liable under the latter statutes usually protect themselves by taking out liability insurance from insurance companies, which agree to reimburse the employer for any damages he may have to pay. The United States Supreme Court has held the state compensation acts constitutional. In 1912 Congress passed a compensation act, known as the Employers' Liability Act, applying to common carriers engaged in interstate commerce. The compensation acts promise to be of great benefit to industry.

### Questions

1. What are the three factors of production? Is a man catching fish in a river with a net belonging to himself a laborer or a capitalist?
2. In what respect are the interests of the laborer and the capitalist the same, and in what respect are they antagonistic?
3. What is a labor union and why are such unions formed? What is the most prominent labor organization in the United States? What is an employers' association?

4. In case of a struggle between labor and capital, what are the weapons of each side, respectively? What is a "sympathetic strike"?
5. What are the usual causes of strikes? What is the "closed shop"? the "open shop"?
6. What was the Adamson Law? Would a coal strike or a railroad strike be apt to succeed if public sentiment is against the strikers? Mention some of the means now being tried to settle industrial disputes.
7. Is it necessarily an evil for children to be made to do some useful work? What was the condition of child labor in mines and factories in England in former times? How is child labor prevented nowadays? Why was the federal Child-Labor Law of 1916 held unconstitutional?
8. What is the great difference between the conditions of women's work now and in former times that makes regulation by law necessary? Mention some respects in which the laws specially protect women workers. Ought a woman teacher to get the same pay as a man teacher of the same grade?
9. Would a statute providing that no one should be hired as a farm laborer more than ten hours a day be constitutional?
10. Has a workman a right to a "living wage" regardless of the amount of work he does? What would you think of a law providing that the minimum pay of day-laborers should be \$3 a day?
11. Mention some measures now being employed to reduce the number of industrial accidents.
12. State whether or not a workman who was injured in a mine, mill, etc., could recover compensation for the injury from his employer in each of the following cases: where the injury was purely accidental, no one being in fault; where the injury was caused by the workman's own negligence; where it was caused by the negligence of a fellow workman; where it was due to the inherent risks of the business.
13. What is the theory upon which modern Workmen's Compensation Acts are based? When were the first of these statutes passed in this country? What is the general plan of compensation under these statutes? In what respects does the workman's chance of recovering compensation differ from what it was at common law?

## CHAPTER XXVI

### SOCIAL PROBLEMS AND REGULATION

**248. In General.**—In this chapter will be discussed certain social problems and public activities that affect in a most vital way the life, morals, and good order of the community. In so far as the government itself takes a hand in these matters, it is mainly in making and enforcing laws known generally as *police regulations*, but in dealing with these problems the community acts not only through its government but also through almost innumerable individuals and voluntary associations.

**249. Maintenance of Law and Order.**—As *being* comes before *well-being*, the first duty of the community is to protect the individual in his life, liberty, and property, and to preserve the public safety, peace, and good order. In every civilized country there is an elaborate system of laws to accomplish these ends. In the United States this duty falls mainly on the state and local governments; only here and there does the federal government have anything to do with maintaining order. If a murder is committed, or a contract is broken, or one person slanders or physically injures another, the matter comes under the laws of the state and not of the United States. In all but a few exceptional cases, it is to the state law and to the state courts that one looks for protection in the ordinary things of life.

**250. The Public Health.**—Until about fifty years ago the government did little for public health except during epidemics of cholera, yellow fever, smallpox, and other virulent diseases. Now the public health is fully recognized as a matter of community concern. Disease is largely a product of community life. It originates and spreads where there is congestion and interchange of population. This fact alone justifies community

action in controlling disease, even if the health of the people were not in itself a matter of great public importance. So the national, state, and local governments all have their health departments.

The United States Public Health Service, under a surgeon-general, is a bureau of the Treasury Department. One of its main duties is the enforcement of the quarantine laws and regulations. Careful supervision is maintained over all vessels coming from abroad to prevent the introduction of disease. By inspections and co-operation with the state health authorities, the federal Health Service maintains domestic quarantine for preventing the spread of disease from one state to another. Another important branch of the work is the scientific study of diseases and methods of prevention.

For the most part public health work is done by the state and local health authorities. Their activities in the line of prevention include such subjects as the prevention by quarantine measures of the spread of communicable diseases; compulsory vaccination; the investigation of sanitary conditions; medical inspection of school children; the disinfection of railway-cars, steamboats, hotels, jails, dwellings, etc.; drainage, the disposal of garbage, sewage, or other refuse matter; the enforcement of sanitary measures relating to spitting on sidewalks and the floors of public places or conveyances, the use of common drinking-cups or towels by the public, burials, cemeteries, and dead bodies; the protection of the water-supply from pollution and of foods from adulteration; and the regulation of factories, stores, mines, etc., with reference to the health of the workers.

Much educational work is done through public lectures, pamphlets, bulletins, circulars, etc., by means of which the people are instructed in matters of sanitation, personal hygiene, and the prevention of disease. One of the most effective of recent health campaigns has been that against the fly, which is the principal carrier of typhoid fever. The popular slogan "swat the fly" has been responsible for the death of millions

of these little pests. The preventive measures taken by the public authorities have greatly improved the public health and lowered the death-rate. Smallpox and yellow fever, which were once common and deadly, have become almost unknown



PATIENTS WITH SYMPTOMS OF TUBERCULOSIS BEING INSTRUCTED IN WORK WHICH WILL ENABLE THEM TO EARN A LIVELIHOOD WHILE UNDERGOING TREATMENT.

diseases in this country. The amount of tuberculosis, typhoid fever, and malaria has been much reduced, and there is hope that in time they too may become rare.

In connection with the treatment of the sick, there are laws requiring physicians, pharmacists, nurses, and dentists to pursue thorough courses of training and to stand examinations as to their qualifications before being allowed to practise. Also the state and local governments lend active aid by establishing hospitals, maintaining laboratories and dispensaries for making examinations or giving treatment, and to some extent in the

employment of public physicians and nurses. In the campaign against tuberculosis the states have been active, co-operating in this work with voluntary associations. Besides educational work with reference to prevention or home treatment, many sanitoriums or camps have been established where patients may be treated free or at a reduced rate.

**251. Pure Food and Drugs.**—Nothing is more important to health than a wholesome supply of food. The purity of food is insured by the inspection by the public authorities of milk, meats, and other foods, and of dairies, packing-houses, canneries, food factories, and markets, to see that products are wholesome and the places of manufacture and sale clean and sanitary. Food-supplies unfit for use are condemned and destroyed, and their sale prohibited. An important factor in this work is the federal Food and Drugs Act of 1906, prohibiting the interstate shipment of adulterated and misbranded food and drugs. Few recent statutes have been more useful than this. By it consumers throughout the country are protecting it from fraud and injury. This statute was passed under the power to regulate interstate commerce. Congress has no direct power to prohibit the manufacture and sale of such products, but the same result is accomplished indirectly by keeping them out of interstate commerce, for if they cannot be shipped to market, they will not be produced. By constant inspections and prosecutions, the Food and Drugs Act is made effective. The federal inspection of meats is in charge of the Bureau of Animal Industry of the Department of Agriculture.

**252. Crime and Its Causes.**—Crimes are wrongs which affect the public and for the commission of which certain punishments or penalties are prescribed which the state imposes in prosecutions conducted in its own name. Not every wrongful act, however wicked it may be, is a crime and punishable as such, but only such acts as are declared by law to be crimes. Moreover, the state has a right to declare an act to be a crime and provide a punishment for it, only when such act is injurious to society. The state has no right to punish

an act just because it is *sinful*; this is a matter between the sinner and his God. For example, golf-playing on Sunday may be prohibited if it is so played as to interfere with the peace or comfort of the public, but not just because some people may think it is wrong to play golf on Sunday. To declare an act to be a crime not because it is injurious to the public, because it is contrary to a certain religion, is to establish that religion by law, which our constitutions forbid.

Some offenses are crimes at common law and others are made so by statute. There are no common-law crimes against the United States, but there are many federal statutory crimes, such as offenses against the revenue or postal service, violation of the prohibition act, etc. The more prominent common-law crimes are treason, murder, arson, burglary, larceny, robbery, bribery, assault, counterfeiting, forgery, and kidnapping. In some states there are both common-law and statutory crimes, but in other states only those acts are criminal which are made so by statute.

The causes of crime are various. Some of the causes are *individual*, being found in the person himself. Some persons are, so to speak, just naturally bad. This may be due to heredity, for character is more or less transmitted from parent to child. Mental weakness may also be responsible for crime, the offender not really knowing better. Other causes of crime are *social*, or partly social and partly individual. Environment largely determines character and conduct. Unfavorable home surroundings and conditions, and the lack of proper training and education, are responsible for much crime. Bad company and bad habits do their part. Economic conditions make their contribution. The very poor may easily be tempted to steal to obtain the necessities of life. As Ben Franklin said: "It is hard for an empty bag to stand upright." Extravagance and the desire to "keep up with the procession" often lead to dishonesty.

Where the causes of crime are social, it seems to be clearly the duty of the community to remove them, so far as possible,

by providing a wholesome moral environment and proper training. When the enormous cost of crime to this country is taken into account, very large expenditures for the betterment of social conditions would seem to be justified.

**253. The Punishment and Treatment of Criminals.**—That a person who commits an offense should in some way suffer for it is a rule of justice which has been recognized from the beginning of history. But different theories have been held as to *why* he should be punished. At first the principle of punishment was *retaliation*. If one man beat or wounded another, the injured party was allowed to return the compliment. This was the so-called law of retaliation (*lex talionis*), a life for a life, an eye for an eye, a tooth for a tooth. The theory was that the offense was against the person injured and not against the public. This was a very natural theory before the conception of *community* rights as distinct from *individual* rights developed. A survival of the law of retaliation is found in the feuds of some mountainous districts. The basis of this law is *vengeance*.

Modern theories of punishment base the right of the state to punish offenders mainly upon its duty to protect society. A criminal is punished to prevent or deter him from committing other crimes and also to deter others. If the criminal is put to death or kept in prison, society is at least protected against him, and the fear of punishment will to a great extent keep others from committing crimes. How far the fear of punishment will act as a deterrent will depend very much upon the certainty and swiftness of the punishment.

One reason why crime prevails to such an alarming extent in this country is that so many crimes go unpunished. Criminals are not arrested, or, if tried, escape punishment through technicalities or delay, and even if convicted are often given undeserved pardons or permitted to escape from prison. The remedy for all this is swift and sure punishment. This remedy works well in England and other countries. But the punishment should be made to fit the crime. If it is made too severe,

it will not be inflicted. Witnesses will not report and juries will not convict where the punishment is out of proportion to the crime. One of the most interesting problems in this connection is the question of capital punishment. Opinion is still divided as to whether the state should for any crime whatever put a human being to death. In some states capital punishment has been abolished, only, in some cases, to be restored again. The prevailing view is that capital punishment is proper for the most serious offenses.

In the *treatment* of prisoners, as distinguished from punishment, modern penology lays great stress on the *reform* of the prisoner. This is justified, if for no other reason, as a means of protecting society. Certainly it is better for the community to reform a prisoner before turning him out again into the world than to release him to continue a life of crime. Unfortunately, the effect of imprisonment has often been to make the prisoner worse than he was before, and even to make of a first offender a hardened and habitual criminal. This is certainly poor policy. From motives of self-interest, at least, the effort of society should be to reform a prisoner whenever possible.

**254. Prisons and Penal Institutions.**—The convicted criminal has no right to a comfortable home and support at public expense, but it is neither just, humane, nor wise to treat him with brutality. Horrible, indeed, was the condition of prisoners, whether convicted or merely awaiting trial, until the reforms which began with the labors of John Howard in the latter part of the eighteenth century. Modern prisons are very differently conducted from those in Howard's time, but there is still difference of opinion among the authorities as to the best types of prisons and the best mode of treating prisoners.

All the states have penitentiaries or state prisons for the more serious offenders, and counties and towns have jails for persons awaiting trial or convicted of minor offenses. The state prisons are carefully and scientifically administered, but this is not always true of the local jails. Some states and cities maintain prison farms on which prisoners are worked. Thus they are

kept under healthful and comfortable conditions and made to contribute to their own support. Prisoners are also employed on roads or other public works. Work of various kinds is done within the prisons and often a prisoner is taught a trade by which he may support himself after his release. Pris-



A CLASS FOR BACKWARD OR UNEDUCATED INMATES IN ONE OF OUR STATE PRISONS.

oners have sometimes been let out to private manufacturers on a contract basis, but this plan is capable of abuse, being much like making slaves of the prisoners.

A marked recent advance in the treatment of prisoners is the change made in the treatment of different types of criminals. Formerly no distinction was made between first offenders and habitual criminals, or between minors and adults. This is now changed. Care is taken to reform the first offender, even if the hardened criminal is hopeless. Juvenile delinquents and incorrigible children are commonly sent to reformatories instead of to the ordinary jails, and are taught the common-school branches while they are being disciplined in good morals and self-control. Thus wayward boys and girls are often turned from a life of crime and developed into good citizens.

The higher life of prisoners is not neglected. Provision is made for their instruction in religious and secular branches and for their entertainment. Sports and games are introduced in some prisons. In all such welfare work the prisoners themselves co-operate and sometimes become leaders. The honor system in dealing with prisoners is used to a considerable extent. Prisoners are released, or the execution of sentence is suspended, upon their pledge or *parole* to behave themselves. In some states *indeterminate sentences* are imposed, the length of the imprisonment being made to depend upon the prisoner's behavior.

**255. The Problem of Poverty.**—Poverty has many causes. A man may be poor because he is lazy, or shiftless, or extravagant, or has expensive bad habits, or is generally of no account. Such a person does not constitute a community problem. If he has no one to take care of him, he will probably do just enough work to make himself fairly comfortable. If he has a parent, or wife, or child, or other relative who can and will take care of or help him, the public is still not concerned. For this class of persons the public need do nothing; a man who will not work or take care of himself when able to do so, has no claim upon the public. But poverty also comes from other causes, such as sickness, accidental injury, natural infirmity or incapacity, the death of a bread-winner leaving helpless dependents, fire, flood, or other disaster, insufficient wages, or from unemployment. In such cases the victim of poverty is not always himself to blame, and often to a great extent his poverty is a product of social conditions. Poverty of this sort is a social or community problem.

The care of the very poor presents a difficult problem. The weakness of human nature is such that efforts to relieve the poor sometimes end in increasing poverty by making paupers or beggars of those who ought to support themselves. Helping people who do not need help often does more harm than good by destroying their independence, besides being a waste of money which might otherwise be spent usefully. It is some-

times found that the more help people get the more they need.

Public relief of the poor may take the form of providing food, fuel, shelter, clothing, medical attendance, or money in times of special or temporary need, or in providing permanent homes for paupers. Until a comparatively recent period the very poor were almost universally left to starve unless supported by their relatives or friends or by begging. Begging in the streets is or has been common in the cities of the Old World. Street-begging is generally prohibited in this country, though the laws against it are not strictly enforced. Indiscriminate giving to beggars and tramps should not be encouraged. Employment is sometimes offered by the public authorities to needy persons who are able and willing to work. Thus persons temporarily out of work may be taken care of until they can get permanent employment. Employment offered is generally declined by that singular fraternity of loafers or "hoboes" known as tramps. Thousands of these able-bodied men drift about the country, moving from one section to another with the seasons or according to varying economic conditions, with apparently no other aim in life than to roam and to avoid work, living as they can upon the country through which they pass. As they live quite simply, they probably do not constitute a very great burden upon the country. For the most part they are simply worthless rather than criminal. There is no reason for helping them.

For the permanent relief of the very poor homes are provided at public expense. From early times in America practically every town or county has had its almshouse or poor farm where paupers and other dependents are kept. Formerly the management of these institutions was often very bad, and the prospect of ending one's days in the poorhouse was gloomy, indeed. Conditions are better now, though in many cases abuses may still be found. Only a comparatively small number of poor persons are entirely taken care of by the public; in most cases the help is extended to them in their homes or elsewhere than in public institutions. It is stated that of the more than 5,000,-

000 persons receiving public aid in 1910, only about 85,000 were in institutions. For the sick poor public hospitals are provided, and dispensaries are maintained in the cities where free treatment may be had. Physicians and nurses are also furnished who visit patients in their homes without cost to them. The social causes of poverty are also attacked, as in the case of correcting the tenement evil by providing suitable houses for the poor, and also by the laws regulating child labor. Much of the charity work in this country is done by the churches, and by voluntary charity organizations, which co-operate in and supplement the work of the public authorities.

**256. Care of the Helpless and Dependent.**—Closely connected with the problem of poverty, and usually a part of it, is the care of the helpless and defective classes. The degree of care which a nation takes of these classes may be taken as a fair index of the standard of its civilization. Among barbarous peoples such persons are either neglected or put out of the way. Some of the ancient nations made a practice of exposing to die or putting to death their afflicted children or old persons who had outlived their usefulness. Only recently has the responsibility of the state or community for the care of the helpless and dependent been fully recognized. In the care of unfortunates great advance has been made in the past hundred years. Formerly dependents and criminals were treated together and in much the same way. The sick, the aged, paupers, dependent children, and the insane or otherwise afflicted, were huddled or confined together in miserable prisons or other establishments along with convicted criminals, without distinction or discrimination. The main object seems to have been to get them all out of the way.

Now all this is changed or is changing. The change has been brought about mainly through the influence of private philanthropists and humanitarians and religious bodies, by whom charitable work in this line was begun and is still largely carried on. In recent times the state to an increasing extent has been taking up the work. Through individuals, charitable organiza-

tions, and public agencies established by the state or municipalities, a vast amount of work is being done for the poor, the sick, the dependent children, and the defectives. Children who are without parents or other persons to care for them are usually cared for and educated in orphanages or homes maintained by religious denominations, fraternal organizations, or other bodies, or in private homes secured for them by charity organizations. The aged are sometimes cared for in private institutions maintained by religious bodies, or in public alms-houses.

State asylums are maintained for the blind and the deaf and dumb. The blind are taught to read books with raised letters and to write upon special slates or tablets, or even with a typewriter. Many of them have been made practically independent by being taught some trade or handicraft. The deaf and dumb were once thought to be also idiots, since they had no way of getting into intellectual contact with others. Now they are taught the usual branches and to talk and to understand what others are saying by reading their lips. Epileptics are also cared for in some states in public institutions.

**257. Care of the Insane and Feeble-Minded.**—Until about the middle of the eighteenth century very little attention was paid in Europe and in this country to the care of the insane. In a few cities in England there were "bedlams," or asylums for the insane, but as a rule no provision whatever was made for them, but they were left to be cared for by friends or relatives or to wander at large, objects of charity or ridicule as the case might be. Many appear to have been executed as criminals or witches. But about 1750 in England more attention began to be paid to the insane, and the number of madhouses, as they were called, increased. In these the insane were confined, not from motives of humanity or to be treated for their affliction, but for the protection of the public. These asylums were maintained by private persons, and so far from being hospitals, were usually prisons of the worst sort. The inmates were confined in cells, chained to the walls, whipped, starved,

and sometimes killed. No attempt was made to cure them. These abuses continued until well into the nineteenth century. The first real asylum for the insane in England, conducted on humane principles, was established about the close of the eighteenth century, and gradually the reform extended. The improvement in the condition of the insane under reformed treatment gave rise to a belief that a milder type of insanity had taken the place of the former more violent form. The real explanation of the apparent change in the type of insanity was the change in the mode of treatment.

The first hospital for the insane in this country was the Pennsylvania Hospital, established in 1751. The first state hospital for the exclusive care of the insane was established by Virginia at Williamsburg in 1768. Now in all the states provision is made by the state for the humane and intelligent care of the insane. Hopeless cases are made as comfortable as possible, and many of the more favorable cases are discharged from time to time as cured. The importance of such provision becomes the clearer in view of the fact that, under the conditions of modern life, insanity is increasing in this country, and, unlike the sick, the insane cannot well be treated in private homes. The rich and poor stand alike in need of public care when insane.

The insane person, properly speaking, has normal or even a high degree of intelligence; his mental faculties are simply *deranged* or out of gear. There is another large class of mental defectives of a different sort, who require different treatment. These are the feeble-minded, or persons born with a low order of intellect or whose mental development has been in some way arrested. The feeble-minded include the idiot, who is almost totally lacking in intelligence, the imbecile, or "half-wit," and those whose brains never develop beyond that of a normal child of twelve or fourteen years. To one of the last type has in late years been given the name of *moron*.

For an incurable idiot training is impossible. All that can be done for him is to take care of him. Half-witted persons

may often be made very useful in domestic service and in the simpler forms of manual labor. Morons may be taught to read and be developed into fairly good workers. They can perform routine tasks, but can do nothing requiring judgment. As a class they constitute a serious social and economic problem. They are not dangerous and do not need to be confined, but they are very numerous, and the presence of a large number of feeble-minded persons is necessarily a drawback to any community. Many of them are voters, and when they marry they often have large families, the children being usually like their parents. From this class the criminals and vicious classes of society are largely drawn. With the mind of a child and the physical development and appetites of an adult, the moron is almost incapable of moral development. Such a person is bound to be a menace to society, unless carefully dealt with. Considerable attention is now being paid to this general subject, and special schools for the feeble-minded have been established in some states.

**258. The Liquor Question.**—One of the biggest problems with which society has to deal is the liquor problem. From the beginning of recorded history men and women have drunk intoxicating liquor, but it has been only within comparatively recent years that the tremendous economic and moral cost the drink habit involves has received much consideration.

Early in the nineteenth century temperance societies began to be formed, the temperance movement being at first directed to the encouragement of voluntary abstinence by individuals, no attempt being made to suppress the liquor traffic or to force people to give up drinking. But the movement soon turned into political channels and for over seventy years the energies of the temperance leaders have been devoted largely, if not mainly, to the enforcement of temperance by law.

At first the temperance movement was founded mainly on moral or religious considerations. The sinfulness of drunkenness was made prominent and churches often excluded or disciplined their members for over-indulgence in drink. The re-

cent movement against the liquor evil is based rather on physical and economic considerations, though, of course, the moral element is still prominent. Statistics published by insurance companies and the experience of the medical profession have convinced the great majority of thinking people that indulgence in intoxicating liquor tends to shorten life and reduce one's capacity to resist disease, and railroad companies and other business concerns have come to the conclusion that drinking by their employees unfits them for the best service, so that a drinking man is at a disadvantage in securing employment. These and other facts have convinced the country that the saloon does not pay. What moral and religious considerations were unable to accomplish by themselves has been brought about with the aid of the practical common sense of the people, and an age-long evil has been outlawed.

**259. Forms of Regulation of the Liquor Traffic.**—Liquor regulation has taken four general forms or phases: (1) The license system. Under this system no one is allowed to sell liquor without first procuring a license to do so from the proper authorities, who are supposed to be careful not to grant licenses to unfit persons. A charge is made for a license so that it serves the double purpose of regulation and taxation. By fixing the charge at a high figure the number of saloons is reduced and the control of the business made easier. The license system once prevailed universally in this country. (2) Local option. Under this system the state law leaves it to the local community, such as a city or county, to decide for itself whether liquor shall be sold within its territory, this being an application of the principle of local self-government. This system was widely adopted and was reasonably successful, but was superseded in many states by state-wide prohibition. (3) State-wide prohibition. (4) National prohibition.

**260. State Prohibition.**—The influence of the prohibition movement has varied from time to time, proceeding, as it were, in waves. The first complete attempt at state-wide prohibition was the Maine law of 1851. The other New England states

and several other states followed with prohibition laws, but a reaction set in almost immediately and most of these laws were repealed. About the year 1885 the movement started again and several states adopted prohibition. Again the movement subsided, but about 1907 prohibition agitation once more became effective. State after state passed prohibition laws or adopted prohibition amendments to their constitutions. The movement proceeded with great rapidity, and by 1918 statewide prohibition had been adopted in half the states, and others were about to follow. At that rate the country would soon have become legally "dry" by the action of the separate states. Prohibition laws were held constitutional by the state courts and by the Supreme Court of the United States.

State prohibition laws can operate only within the states, and prior to the adoption of the Eighteenth Amendment the states could not, without the consent of Congress, prevent the shipment into the state of intoxicating liquors from other states. Liquor so brought into the state could be used by the person who brought it in or sold by him in the original package or container, notwithstanding the state prohibition law.

To meet this situation, Congress, in 1890, by the Wilson Law, and in 1913, by the Webb-Kenyon Law, made interstate shipments of liquor fully subject to state laws, and in 1917, by the Reed Law, prohibited the shipment of liquor into prohibition states. Liquor and liquor advertisements were also excluded from the mails. Thus it became possible, with the help of these acts of Congress, for any state to make itself legally "bone dry," if it wished to do so. Nevertheless, the agitation for the adoption of an amendment to the federal Constitution prohibiting the manufacture and sale of intoxicating liquors was pressed to a successful issue in the adoption of the Eighteenth Amendment in 1919.

**261. National Prohibition.**—The Eighteenth Amendment to the federal Constitution reads as follows:

"Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating

liquors within, the importation into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

"Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

"Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress."

The Eighteenth Amendment became operative one year after ratification, that is, on January 29, 1920. Meanwhile, while it was pending before the state legislatures, Congress, *as a war measure*, passed a national prohibition act approved on November 21, 1918, or ten days after the signing of the armistice which ended hostilities in the World War. This act was held constitutional by the Supreme Court. Under the authority of the Eighteenth Amendment Congress passed an elaborate prohibition law known as the Volstead Act. The state prohibition laws also remained in force. The enforcement of these prohibition acts constitutes one of the most difficult and important problems of the country. The Volstead Act and the various state acts are very strict and comprehensive, carrying the prohibition beyond what many think necessary in the interest of temperance. It is probable that in time public sentiment and improvements in the laws and methods of enforcement will bring good results. The subject is one which calls for the exercise of the highest degree of wisdom and care that the best possible measures and means be adopted to put an end to an evil so destructive of individual and community welfare.\*

\* Somewhat akin to the liquor problem is the problem of morphine and other narcotic drugs, the use of which is far more destructive of character than the use of intoxicants. Strict laws have been passed regulating or restricting the use of narcotics, the most important of which is the act of

### Questions

1. What is the first duty of the community toward the individual? Why is it sometimes necessary for the community to help one person as a means of protecting another?
2. Why is health more a matter of public concern in a city than in the country? What does the federal government do for the public health? Who looks after the health of your community? Mention some of the things being done. Could tuberculosis be eliminated? Have the pupils in your school been examined, or vaccinated?
3. Mention some of the things being done to secure the wholesomeness of the food-supply. What has Congress done?
4. What is a crime? Ought a man to be punished for swearing privately in his own room?
5. Mention some of the principal reasons why people commit crimes. Has society any duty with reference to the removal of the causes of crime?
6. Why should the state punish a criminal? If the punishment for spitting on a sidewalk were thirty days in jail, would you report a case you had seen? Is there any advantage in sending a criminal to prison if he comes out of prison worse than he was before? Are the jails in your community well conducted?
7. Name some of the causes of poverty. Is it the business of the community to take care of an able-bodied person who will not work? Mention some of the ways in which public help is being given to the poor.
8. What is being done in your state for the insane? the blind? epileptics? the feeble-minded?
9. Give in brief outline a history of the movement for the regulation of the liquor traffic in the United States. In what respect does the Eighteenth Amendment differ from the other provisions of the Constitution?

Congress of 1914, known as the Harrison Drug Act, which, in the form of a tax law, regulates in detail the manufacture, sale, and dispensing of narcotics. The manufacture of opium for smoking is also suppressed by a prohibitive tax of \$300 a pound.

## CHAPTER XXVII

### MUNICIPAL FUNCTIONS AND ACTIVITIES

**262. The Problems of the City.**—In the city are found the greatest need and the best chance for community co-operation. The crowding together of thousands of persons in a small area raises problems which do not exist in the country, but at the same time in the city are found the leaders and resources for solving these problems. In the country individual families are still quite independent. They can to a great extent provide themselves with shelter, food, fuel, water, and other necessities without outside help, but how different in the city! Here thousands of people are crowded together, many families often living under the same roof. Few own the houses in which they live, and there is a constant moving from one place to another. In the congested districts individual dwellings for single families are unknown. Scores of families are huddled together in a single tenement-house, and, farther out, apartment-houses afford shelter for all classes of society.

The city-dweller is a specialist; he has his own narrow line of work. For practically everything he needs he must depend upon some one else. Shelter, food, clothing, fuel, water, light, and transportation must be provided by others. He is exposed on all sides to the dangers of fire, disease, and crime, from which he is helpless to protect himself. Surrounded by thousands of fellow human beings, he may live a stranger, without the joys and privileges of human society and friendships. If he lives in a tenement or apartment house, he probably does not know his neighbors on the next floor, and possibly cannot speak their language, for one of the most striking facts about a modern

large American city is the large proportion of newly arrived foreign population. It would be hard to overstate the helplessness of the city-dweller as an individual. Only through organization, co-operation, and community action is life in a city possible.

But it is not merely the question of living. The city gives rise to serious economic and social problems. In the country a man may usually work for himself if he wishes to do so. The vast majority of city-dwellers work for others, and it is in the city that the great problems of labor and industry usually arise. There is also great inequality in the distribution of wealth; vast fortunes are matched by desperate poverty. Also, the conditions of the city breed vice and crime, which must be controlled at whatever expenditure for courts, police, and penal institutions. These are some of the problems of the great city. They do not exist in the towns or smaller cities, or at least only in much less degree. These combine many of the advantages of both rural and city life, without the disadvantages of either.

**263. The Opportunities of the City.**—But the opportunities and advantages of the city are no less striking than its problems. It is in the city that community life exists in its full measure. As has been well pointed out, the city has always been the centre of civilization. With it came education, culture, and a love of the fine arts, which can arise and flourish only where, as in the city, are found leisure and accumulated wealth. With the city also came science, invention, and industry, which are made possible by wealth and the division of labor. Division of labor requires co-operation, which means simply that each shall do his part harmoniously with the rest; in other words, that all shall *work together*. This is what has made civilization possible. Co-operation is neither so necessary nor so practicable in the country as in the city, though even in the country there is much room for it. But in the city it is vital. "The city can only live by co-operation; by co-operation in a million unseen ways. Without co-operation for a single day a great city would stand still. Without co-operation for a week it would



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THE CUNARD BUILDING, ONE OF THE LARGE OFFICE-BUILDINGS IN NEW YORK CITY.

be brought to the verge of starvation and be decimated by disease." \*

And in the city co-operation is found. Co-operation depends upon organization, and organization is impossible without leadership. In every city there are men and women qualified in heart and brain to lead movements for the public good, and to organize and put to use the almost unlimited resources of the people. The splendid co-operative work of the more progressive American cities is one of the most reassuring signs of our times. In some cases this co-operative work is done by the municipal government as the official agency of the community, while in other cases it is done by voluntary associations of individuals acting either alone or in conjunction with the city government.

In most cities there is a chamber of commerce, board of trade, or similar organization, composed of public-spirited citizens interested in the advancement of the city, especially in commercial and industrial lines. These associations advertise the city, answer inquiries as to its advantages as a place of residence or business, and seek to attract new enterprises or residents. Some of them issue attractively illustrated and well-written booklets descriptive of the city, which they send to any person interested. In this work the municipal authorities sometimes co-operate.

**264. Municipal Functions and Activities in General.**—Some of the functions of a municipality are of a governmental character, while others are primarily of a business nature. The maintenance of law and order is the most important of the governmental functions, and can be performed only by the governmental authorities. The municipal authorities enforce not only the ordinances passed by the city government, but, as a rule, also the laws of the state, which, of course, operate in the city as well as in the country. The first duty of the city government is to protect the life, health, and property of the

\* See Howe, "The Modern City and Its Problems," pp. 1-4. I have found this book very helpful in the preparation of this chapter.

people. Another essential function is the construction and maintenance of streets. Public education has in modern times come to be regarded also as essential. More recently various kinds of welfare work, such as provision for housing the people



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#### FIFTH AVENUE, NEW YORK CITY.

Even the best traffic regulation has not completely remedied traffic congestion.

or for their comfort, pleasure, or recreation, have been taken up by the cities.

The present tendency is toward an increase in the number of municipal activities, especially in the lines of welfare work and making the city more beautiful and attractive. In these lines many individuals and private organizations are co-operating with the municipal authorities. The business functions of the city are in connection with the maintenance and operation of the various public utilities, which, however, are usually in the hands of private corporations. The organization of the municipal government for the discharge of its various functions has already been described.\*

\* See *ante*, Chapter XIV.

265. **City Planning.**—If a house in which a few people are to live is carefully planned before the foundations are begun, why should not a city, which is to be the home of thousands of persons, be also planned from the beginning? Perhaps the main reason is that, as a rule, cities grow up gradually and it



A PART OF THE WATER-FRONT AT DES MOINES, IOWA,  
BEFORE IMPROVEMENT.

is never known at the beginning whether there is to be a city or not. But even a village may be so planned that the plan adopted will serve equally well should the village ever grow into a city. City planning is a modern art and began and has been most highly developed in Europe, especially in Germany. The German cities are planned as carefully as a private building, with ample provision for future growth. In the United States city planning was almost an unknown art until within the past few years, but now a great deal of attention is being paid to the subject, and city planning is becoming the subject of a new profession of municipal engineering.

Most American cities are laid out according to the familiar checker-board or gridiron plan adopted by William Penn in laying out the city of Philadelphia. The streets run in straight lines crossing each other at right angles and forming rectangular blocks, and with no thoroughfares radiating from a centre.



SAME WATER-FRONT AFTER IMPROVEMENT.

This plan is simple and economical of land, but is monotonous, opens up no attractive vistas, and affords no municipal centres or commanding sites for important buildings. Also, it requires a zigzag course for traffic moving diagonally across the city. In the case of Washington, which was planned by Major L'Enfant, a French engineer, before the city was begun, this plan is modified by a system of prominent avenues radiating from the Capitol, along with numerous parks and open spaces. Washington is one of the best-planned cities in the world. Ordinarily the additions to cities have been laid out by land speculators by whom the developments were made. Private profit rather than the public good has been the controlling considera-

tion. As a rule, too, lot-owners are permitted to put up any sort of building to suit their own purposes, without reference to its effect on the appearance of the city. Cities have almost always failed to retain possession of their water-fronts and to make provision for adequate transportation facilities. Also public buildings are often poorly located.

All this is changing. The present attitude toward city planning is said to date from the World's Fair at Chicago in 1893. The magnificent spectacle of that carefully planned "White City" raised in the minds of the American people the question, why could not their permanent cities be planned with equal care and be as beautiful as this play city of a single season? Since then many cities have entered upon elaborate plans of reconstruction. New streets have been opened, old streets have been improved and beautified, and parks and civic centres have been established. The civic centre, an open space about which the municipal buildings, the public library, and other important buildings are grouped, is one of the most striking features of this development. The civic centres of Cleveland and Denver are fine examples.

**266. Streets and Bridges.**—The laying out of streets is the most important single feature of city planning. The problem is to obtain the maximum of service at the minimum of cost for construction and maintenance. If the street is not run in the right place, it will not render the best service; if it is too narrow, traffic will be congested; if it is too wide, it will take too much valuable land and will cost too much for original construction and for cleaning and maintenance. The street not only serves for traffic on its surface, but beneath the surface are laid the water and gas mains, the sewers, and the electric wires. In the towns and smaller cities electric wires are usually strung on poles set in the streets. Where there are street-cars, rails must be laid in the streets.

There is also the matter of paving. This calls for the selection of the best material, whether macadam, blocks of wood or granite, brick, asphalt, concrete, etc. The kind of paving

to be used depends upon the nature of the service. What would be best in a residential district where the traffic is light would not do at all for a business street. Original cost, durability, and the ease with which it is kept clean are other points to be considered in selecting paving material. Clearly those in charge of the streets have no small job on their hands. It is easy to make costly mistakes. And this job is not ended with the construction of the streets. They must be constantly repaired, for traffic is very destructive, and most of the available paving materials soon wear out or need to be relaid. Then there is the lighting of the streets, and constant cleaning, including, in winter, the removal of snow and ice.

Where the city is built on hilly ground or there are rivers or streams to be dealt with, the burden becomes still heavier. Deep cuts must be made in hills and fills thrown across ravines, and even tunnels may sometimes be necessary. The construction of a viaduct across a deep ravine or valley may make possible the addition to the city of extensive areas of attractive building sites. Rivers and smaller streams running through or by the side of the city must be bridged, and when the stream is navigable, the bridge must not be so low as to interfere with navigation or must be provided with a draw which can be opened to allow vessels to pass through. At Pittsburg there are about twenty bridges across the Allegheny River, and in Chicago more than fifty drawbridges cross the Chicago River. Many cities have built magnificent and costly bridges.

**267. Police Protection.**—The maintenance of law and order in towns and cities is in direct charge of the police department, at the head of which is a board or commissioner or chief. The members of the police force wear uniforms, and in the cities are organized in military fashion with the ranks of captain, lieutenant, sergeant, and patrolman. The function of the police force is primarily to preserve order, but they also perform certain other special duties, for example, directing traffic at the intersection of streets, or assisting women and children or strangers. In some cities policewomen are employed to some

extent. In selecting members of the police force care is taken to appoint only those who are physically and morally fit for the service. In some of the larger cities policemen are appointed under civil service regulations.

268. **Fire Protection.**—About two hundred millions of dollars worth of property is destroyed in this country every year



THE FIRE TUG IS OF GREAT VALUE IN FIGHTING FIRES ON THE WATER-FRONT.

by fire. Some of the buildings so destroyed are old and perhaps are better out of the way, but most of this destruction means a net loss to the country. The individual property-owner's loss may be covered by insurance, but the country is nevertheless poorer to the extent of the actual loss, and the insurance money is collected in premiums from the great body of policyholders. Insurance is merely a co-operative method

of distributing individual loss. The amount paid in premiums considerably exceeds the amount paid for losses. Besides this, much of the property destroyed is not insured at all, or only partially insured. To the cost of insurance must be added also the cost of fire departments and other means of prevention.

Much of this huge fire bill is unnecessary, for many fires are caused by pure carelessness. A lighted cigarette or match thoughtlessly thrown in a waste-basket or on the floor may cause the loss of thousands of dollars worth of property. The careless use of kerosene in starting kitchen-fires, leaving the current on in electric irons, and defective flues, are other common causes of fires. Accumulations of trash in cellars and garrets, in which fires may easily start, may cause the loss of one's home. In cities the use of wood and improper methods of construction lead to the rapid spread of fires from house to house.

Protection against fire in cities assumes two forms: fire extinguishing and fire prevention. The former belongs to the fire department, which is in charge of a fire commissioner or chief. In the smaller places the fire department is composed of volunteers, but the larger towns and the cities have paid fire departments. The fire-fighters of the American cities are regarded as the best in the world. They render an efficient, and often heroic, service in saving property and lives. In some of the larger cities firemen, like policemen, are appointed under civil service regulations. Cities are usually divided into fire districts, each with its own engine house and fire equipment. In case of a large fire all the apparatus in the city may be employed, and help may even be summoned from other cities. Some years ago one of the striking sights of a city was a fire engine drawn by magnificent horses hurrying to a fire. Automobile fire engines and hose and ladder carts are now commonly used. Chemical engines are largely used for extinguishing small fires without water. Frequently, water causes more damage than the fire. For use in case of fire, water-plugs are

distributed over the city and a system of electric fire alarms is installed.

Fire prevention consists mainly in the establishment of "fire limits," within which wooden buildings may not be erected, and the enforcement of building regulations designed to reduce the danger of fires. Asbestos curtains in theatres shutting off the stage from the rest of the building are familiar to theatre-goers. Factories and business houses are sometimes provided with automatic sprinklers, and hand fire extinguishers are common in buildings of all kinds. Dreadful tragedies involving loss of life in fires have led to various preventive regulations. Theatres and hotels must have convenient exits and fire escapes, marked with a red light or otherwise. Fire escapes are also prescribed for large tenements and factories. The doors of auditoriums and public schools must open outward. Fire drills of school children are conducted in many schools to train them in getting out of the building in case of fire.

**269. Cleaning and Sanitation.**—Every city has its street-cleaning force and equipment. This is important not only for the sake of appearances and comfort, but of health as well. Multitudes of disease germs may lurk in the dust and filth of streets to be borne by the wind to the lungs of people or carried by flies to their food. The streets are sprinkled to keep down the dust, and are swept by men or mechanical sweepers, or washed by flushing them with water from the fire-plugs. So far as practicable the streets are cleaned at night so as not to interfere with persons using them. The city also collects garbage, ashes, and rubbish of all kinds from houses. Much usable material is saved from city rubbish, and the collecting of rubbish is sometimes turned over to contractors who make a profit by selling the materials they reclaim. Ashes may be used for filling in low places. Some use has been made of garbage as food for hogs or as a fertilizer. In the smaller places there is little salvage from waste materials. The main thing everywhere is to get such matter out of the way. Some cities have incinerators, in which all combustible wastes are burned.

Sewage is liquid waste from toilets, kitchen-sinks, etc. This is carried off in underground drains or sewers. Into these is also discharged the water from rains and melting snows, which is collected by gutters and catch-basins distributed throughout the city. This waste water helps to keep the streets and sewers clean. Usually sewage is discharged directly into streams, harbors, or the sea, as may be convenient; but where conditions make such a course desirable, sewage is purified by filtration, oxidation, or by chemical treatment before being discharged. It is said that sewage discharged into rivers is purified by natural processes after it runs a few miles, and hence the water may be safely used for drinking purposes by people living in cities farther down the stream.\*

**270. Public Health.**—In the city the health question is especially urgent, for many conditions there are peculiarly favorable for the development and spread of disease. Crowded tenements and factories may easily become active breeders of tuberculosis, typhoid fever, and other forms of sickness. In no department of municipal administration has there been greater advance than in the care of the public health. In this work the city health departments co-operate with the national and state authorities. Through the effective work they have done and the improvement of living conditions in the cities, the death rate of American cities has been steadily lowered, and most cities are healthful places in which to live. Contrary to the common belief on the subject, the physical examinations of the men called into the military service during

\* Some years ago Chicago constructed a great drainage canal forty-two miles long, primarily to carry its sewage to the Illinois River and through it to the Mississippi. This work cost about \$45,000,000, and the canal may ultimately be converted into a ship canal. The city of St. Louis claimed that the sewage so discharged into the Mississippi poisoned the drinking water of St. Louis, and the state of Missouri brought suit in the Supreme Court of the United States against the state of Illinois and the Chicago Sanitary District to enjoin the discharge of the sewage of Chicago into the Mississippi. The court dismissed the suit on the ground that it was not shown that such discharge injuriously affected the water at St. Louis.

the World War revealed the fact that the physical condition of the young men from the cities was equal or superior to that of those from the country.

The municipal health problem involves other problems, such as housing, sanitation, food and water supply, and recreation.



*Courtesy of the Department of Health, New York.*

**HEALTH INSPECTION AND FREE TREATMENT GIVEN BY  
THE CITY.**

Living conditions must be made healthful, the water must be pure and the food wholesome. These particular subjects are discussed in other sections. Health inspection is especially important. Premises are inspected to see that they are kept in sanitary condition. Cases of contagious or infectious diseases are required to be reported to the health authorities, and the patients are quarantined and the premises fumigated or otherwise disinfected when necessary. When a case of scarlet

fever or diphtheria is found, the house is at once quarantined and a notice posted at the door warning persons to stay away. Smallpox patients are isolated in a pest-house or hospital. When an epidemic breaks out, schools, churches, theatres, and other places of public resort may be closed until the danger of further spread is over. Dispensaries are maintained where any one can have a physical examination without charge and minor cases are treated. Visiting nurses are provided to look up cases of disease, especially tuberculosis. Besides the various private hospitals, there are usually hospitals conducted by the city.

A very important preventive measure is the medical inspection of school children, the object of which is to guard against their acquiring or spreading contagious diseases, and to look after their eyesight, teeth, ears, nasal passages, and general health. When ailments are found steps are taken to correct or cure them. In some cases it has been found that poor children lacked sufficient food, and some cities are supplying lunches in such cases. By these means the health and physical development of the rising generation are being assured.

**271. Food and Supplies.**—A city's supply of food and fuel comes from without, and as a rule only a few days' or weeks' supply is kept on hand at any time. For these necessities the city is absolutely dependent upon keeping the channels of transportation open. During the severe winter of 1917-1918 there was danger of serious suffering from shortage of coal and food in some of the great cities by reason of the interruption of transportation by snow and ice. Ordinarily, however, there is an ample supply brought from all parts of the country, and the chief concern of the city authorities is to see that food shall be pure and that the purchaser shall have honest measure. By various regulations and careful inspection, the federal, state, and local authorities protect the consumer from impure and unwholesome meat and canned foods. Special attention is paid by the municipal authorities to the milk supply. Standards are prescribed to which the milk must conform, and only

milk from healthy cows and clean dairies may be sold. Since milk is the main food of babies, the infant-mortality rate of a city is determined largely by the local milk standards. Honesty in the sale of food is secured by inspection of dealers' scales and measures. If these are found short they are destroyed.

Price regulation is not attempted, this being left to the operation of the law of supply and demand, though monopolies may be broken up and conspiracies to hold up prices punished. In order to cut out the middleman and thus reduce the price of produce to the consumer, some cities maintain markets, in which farmers and other producers may rent stalls and sell their products directly to the consumer. The public market is an old institution, and such markets were once quite common in this country, but in recent years they have not been much in favor. Quite lately, however, the rise in the cost of living has revived interest in them and they may again become common.

**272. The Housing Problem.**—If the art of home-making is not the finest of the arts, it is certainly one of the most important and useful. The home is the heart of society. There the child learns his first lessons in community life. The authority of his father and mother sets forth to his young mind the authority of the state, and in his relations with his brothers and sisters he learns some of the principles which are to govern his future relations with society at large. The character of the nation is both shown and determined by the character of its homes. It takes good people to make good homes, and it is from the homes "where truth and honor dwell" that good citizens must come. Bad homes mean bad citizens. Every community is vitally interested in making its homes the best possible. But to make a home there must first be a house to live in. This brings up the housing problem.

In the country and town there is usually no housing problem. Each family may have its separate dwelling, with yard and perhaps a garden. In the small city also good homes are usually within the reach of all. There are no crowded tene-

ments, no congestion, and no slums. But when a city reaches a population of a quarter of a million or more, there arises the housing problem. Individual homes largely give place to the



A VIEW OF THE TENEMENT DISTRICT IN A LARGE CITY.

tenement, housing several, perhaps many, families. There is no yard, and of course no garden. In the larger cities these conditions are intensified. The tenements and apartment-houses become larger, and every available foot of space is built upon, and in the poorer quarters light and air are almost shut

out from the sleeping-rooms. The alley and the street constitute the only playground for the children. In the worst cases hundreds of persons are lodged under a single roof, and sometimes a family occupies a single room.\* In this the family eat and sleep, do their washing and ironing, rear their children, care for their sick, and die. Into thousands of city rooms the sun never enters. In the poorer tenements disease germs and filth abound; there is next to no plumbing, and the bathtub is practically unknown. Decency is almost impossible. Such tenements are the breeding-places of disease, vice, and discontent.† From them go forth physical, moral, and political contamination. It is a mockery to call such places homes.

Under such conditions "millions have become cliff-dwellers, ready to move on a moment's notice; quite frequently accustomed to eviction for the non-payment of rent." Such conditions clearly present a community problem. The wretched tenants are helpless to improve their own condition. In self-protection, to say nothing of considerations of humanity, each community should see to it that it is possible for every family to secure at a reasonable price a place in which they can live in decency and reasonable comfort.‡

The conditions just described naturally existed on the largest

\* A story is told of two families occupying one room, with a chalk-line in the middle of the floor to mark off their respective shares. When asked how they got on, one of the occupants replied that they did very well until the other family took in a boarder. This jest does not greatly exaggerate the conditions once prevailing in some of the tenements of New York.

† Some years ago there was in New York a block of tenements aptly known as "The Lung Block," from its character as a breeding-place of consumption. Nearly 4,000 human beings were crowded into these wretched tenements, including some 400 babies. In nine years 265 cases of tuberculosis were reported from this block, and this was probably not over half the true number. One of the worst of these dark tenements was significantly known as "The Ink Pot."

‡ Within the past several years housing conditions have become almost critical in some of the large cities, notably New York and Washington, owing to conditions growing out of the war. Drastic laws have been found necessary to protect tenants from landlords, who, however, are not always themselves to blame for the staggering rents they charge.

scale in New York City, but fortunately they have now been abolished there. About twenty years ago investigations of the tenement situation in that city led to radical reforms. Private philanthropy supplied a few model tenements, but these were scarcely more than a drop in the bucket. Effective relief was secured by the enactment of tenement laws regulating in detail the kind of tenements that would be allowed. These laws insure to the tenants fairly comfortable and sanitary lodgings. This legislation has been largely copied in other states.

But the housing problem is not merely a question of building construction. The improvement of buildings does not materially reduce congestion or bring down rents. The housing problem is also a problem of land and transportation. In every city there are many vacant lots upon which houses could be built and the congestion relieved, but which are held for speculation. It is proposed to force and to encourage building upon these lots by putting a heavy tax on unimproved land and the total exemption of houses from taxation. Vacant lots bring in no income, and heavy taxes will soon consume all the profits to be expected from a rise in the price of the land. The owner of a vacant lot so taxed will either build a house on it, which he can rent, or sell the lot to some one else who will build on it. The fact that the improvements will not increase the taxes makes it easier to build them. This simple and just plan of taxation would soon put an end to the holding of vacant lots in the heart of a city when there is need of more buildings. Another solution of the housing problem is found in the improvement in rapid-transit facilities which makes it possible for one to live farther away from his place of work or business.

Closely connected with the housing problem is that of providing facilities for bathing and laundering which the poorer homes may not afford. For the benefit of persons lacking such conveniences in their homes, public bath-houses are provided in some cities in which the use of bathing facilities may be had

free or for a nominal fee, and to some extent there are public laundries equipped with machinery in which women may do their family washing.

273. **Public Schools.**—It is stated that from one-fourth to one-third of a city's entire annual revenue is spent on its public



© Ewing Galloway.

DURING THE SUMMER MONTHS SHOWERS ARE ATTACHED TO FIRE-HYDRANTS FOR THE RELIEF OF CHILDREN IN THE POORER DISTRICTS OF THE CITY.

schools. The schools are usually placed in charge of a separate board or committee which has charge of the construction and maintenance of school buildings, the selection of teachers and text-books, etc. The municipal schools are usually linked up with the state educational system, but are mainly financed and controlled by the local authorities. It is in the city schools that modern public education is carried to its highest point.

A great deal of attention is being paid to the construction of school buildings with a view to their becoming centres of community life, and they are being adapted to various uses not directly connected with instruction. Auditoriums are pro-

vided in which public meetings, lectures, and entertainments may be held, and which, by removing the seats, may be used also for receptions, dancing, school fairs, and the like. Some of them have regular stages and even pipe organs. Motion-picture machines in the public schools are becoming common. In some of the schools dramatic clubs are organized and plays are presented. Art exhibitions are held and concerts are given.

Many schools are equipped with gymnasiums, with baths, and occasionally swimming pools. In the larger cities there are roof gardens, and playgrounds and inside playrooms are common everywhere. Lunch rooms are also provided for the pupils. An important feature is the establishment of libraries in the school buildings. This is the easiest way to connect the home with the public library. In a number of cities polling-places are set up in the public schools and political meetings are held in the auditoriums. Thus the pupil receives practical instruction in civics by watching democracy in action.

**274. Public Utilities.**—Among the most important functions of a municipal corporation is the providing or regulation of the so-called public utilities. Of these there are five: (1) Water systems; (2) gas plants; (3) electric plants; (4) transportation systems; and (5) telephone systems. All of these are found only in the larger places, but even the smaller towns are provided with water systems and some kind of lighting system, and telephones. Sometimes the public utility is owned and operated by the municipality, but in other cases it is owned and operated by a private corporation, acting under a permit or franchise granted by the municipal authorities. No one has a right without such permission to establish a public-utility system in a town or city. The construction and operation of such a system involves the use of the public streets, and the exercise of powers not naturally belonging to private individuals. The supplying of these utilities is therefore a public function. The municipality may furnish them itself or may permit private corporations to do so, but in either case the duty and service is public.

A public utility is bound to be a monopoly. It would be out

of the question to permit two or more rival corporations to use the streets for street-car tracks or for telephone or lighting lines. Besides this, the construction of a public-utility plant involves the investment of a large amount of money, and very rarely would two systems pay in the same town. Only by the grant of a monopoly could a corporation ordinarily be induced to undertake the service. Whether the municipality shall itself supply the people with the particular service or turn this function over to a private corporation, is a question of policy to be determined in each case by circumstances. The comparative advantages of public and private ownership vary greatly according to the particular city and the particular service. In some cases better and more economical service can be obtained by municipal ownership, but as a rule the best results are gotten through private ownership and operation under regulations prescribed by the municipality or state.

A franchise constitutes a contract between the municipality and the corporation, and in it may be included terms protecting the interests of the public, such as the rates and conditions of the service. Public utilities are also regulated by law. In recent times the tendency has been toward regulation by the state rather than local regulation, and in most of the states there are public-service commissions charged with the supervision of all public utilities. The fact that it is common for the same corporation to serve a number of towns, as in the case of electric and telephone systems, makes state regulation the more appropriate.

**275. Water Supply.**—The most indispensable public utility is the water supply, and all towns and cities have some kind of water system.\* For drinking, bathing, cooking, and other

\* "It is related that once a group of Zunis visited the Eastern states, and saw all the wonders of our civilization. When, after having seen everything remarkable that could be shown them, they were asked which was the strangest, they said that the most wonderful thing that the white man had accomplished was his ability to open a faucet anywhere and have flow from it a stream of water. Not infrequently the Zunis from their dwellings must climb down hundreds of feet into a canyon, and there place a jar under an opening from which slowly trickles the water, sometimes drop by drop." Van Hise, "Conservation of Natural Resources," 117.

domestic purposes, and for watering lawns, the American people use a great deal of water. The municipality also uses much water for sprinkling and cleaning streets and for putting out



THE LOS ANGELES AQUEDUCT.

fires. Although only a small part of the total water supply is used for drinking, all must be pure, for it is not practicable to have a separate supply for drinking purposes. Usually water systems are owned by the municipality. The cost of a system is high, but it is easily and cheaply operated, both of which

facts are reasons in favor of municipal ownership. But the most important reason is the vital connection between the water supply and the public health and safety. If the water is not pure, epidemics of typhoid fever and other diseases may result, and a shortage or interruption of the water supply may expose the city to disastrous fires. In these vital matters the people of the city should not be dependent upon private corporations.

No pains have been spared by American cities to provide for their inhabitants an abundant supply of pure water. Where a city is situated on a river or lake the supply will usually be drawn from it. Richmond, Virginia, gets its water from the James River, and St. Louis from the Mississippi. Chicago draws from Lake Michigan and Cleveland from Lake Erie. New York is supplied from the Croton Lake and from the Catskill Mountains, the aqueduct from the latter being ninety-two miles long. The total cost of the New York system up to 1918 (\$330,175,089) was almost as much as that of the Panama Canal, exclusive of the amounts paid for canal rights (\$367,-000,000). Los Angeles has constructed a 240-mile aqueduct and water system at a cost of nearly \$25,000,000, the water being used also for irrigating the desert through which the aqueduct passes and for power.

Where the water is contaminated it must be purified, and for this purpose filtration plants are constructed. The water is made to pass through great beds of sand which strain out the impurities. Chemical purification is also used to some extent. Philadelphia\* and Pittsburg filter their water. Where the water supply is muddy, as at Richmond, settling basins are used to give the sediment a chance to settle to the bottom.

\* In 1912 a break occurred in one of the Philadelphia mains, and while it was being repaired unfiltered water was turned into the system in the district affected. The result was a typhoid epidemic with 376 cases and twenty-five deaths. Great pains were taken to prevent a repetition of this disaster. The next year when a similar break occurred, the unfiltered water was chemically treated and notices were at once given in every possible way to the people of the district warning them to boil the water, and there were no cases of typhoid.

The water is distributed through mains in the streets, from which it is carried by small laterals into the houses. The charge may be determined either by a flat rate for each house, or hydrant, faucet, etc., or by the quantity used as shown by metres installed in each house or other place of use.

**276. Gas and Electric Systems.**—Until a little over two hundred years ago the lighting of city streets was unknown. If one ventured into the streets at all at night he took his own lantern, and, if prudent, a weapon as well. Macaulay thus describes the difficulty and danger of walking about the streets of London after nightfall 250 years ago: “The garret windows were opened, and pails were emptied, with little regard to those who were passing below. Falls, bruises, and broken bones were of constant occurrence. For, till the last year of the reign of Charles II (1685), most of the streets were left in profound darkness. Thieves and robbers plied their trade with impunity, yet they were hardly so terrible to peaceable citizens as another class of ruffians. It was a favorite amusement of dissolute young gentlemen to swagger by night about the town, breaking windows, upsetting sedans, beating quiet men, and offering rude caresses to pretty women.” But in 1685 “began a great change in the police of London, a change which has perhaps added as much to the happiness of the body of the people as revolutions of much greater fame. An ingenious projector, named Edward Heming, obtained letters patent conveying to him, for a term of years, the exclusive right of lighting up London. He undertook, for a moderate consideration, to place a light before every tenth door, on moonless nights, from Michaelmas (September 29) to Lady Day (March 25), and from six to twelve of the clock.”

Thus began municipal lighting. Real illumination became possible with the introduction of gas, London being first lighted with gas in 1814. We perhaps look upon the lighting of streets, parks, and public buildings primarily as a matter of convenience, and a great convenience it undoubtedly is, but it is probably still most important as a preventive of crime. A

well-lighted city needs fewer policemen than one whose streets are dark.

Electricity is now almost the exclusive agency for street-lighting, gas being used mainly as a fuel. Gas and electricity for light, heat, and power are usually supplied by private cor-



THE GREAT WATER POWER PLANT AT NIAGARA FALLS.

Niagara Falls generates electricity for an area of 25,000 square miles.

porations. Very few cities own their gas plants, but about one-fourth of the electric plants are publicly owned. Frequently the electric service is supplied by a water power plant distant from the city, which supplies a number of different municipalities.

**277. Transportation.**—In the smaller towns there are no street railways, but in all the larger places the transportation systems play a vital part in municipal life. The development of modern cities along their present lines would have been impossible without some form of rapid transit. The first street railway was built in 1831 in New York. Boston followed in

1856, and Philadelphia in 1857. London did not permit street railways until 1870. The first street cars were drawn by horses. Cable lines were constructed to some extent, the cars being operated by cables running under the surface, a gripping device sliding in a slot connecting the car with the cable. Electric railways were first used on a practical scale in 1888 in Richmond, Virginia. Now electricity is used on all street railways, except a few short cable lines. In several of the larger cities elevated railways are used. Underground railways, or subways, were first begun in 1860 in London. Boston and New York have extensive subway systems. In New York subways, surface lines, and elevated lines are all found, but, notwithstanding the great development of the transportation system, comfortable provision for the enormous traffic of the city has not yet been made. In all of the large cities the supplying of adequate local transportation facilities constitutes one of the most difficult municipal problems.

With very few exceptions street railway systems are privately owned. Franchises are granted to private corporations, with the right to build tracks and operate cars in the city streets. Much abuse and corruption has existed in connection with the granting of these franchises, often with a very inadequate return to the city. The quality of the service rendered and the rates of fare have been frequent causes of public complaint. These evils have been largely corrected by regulation and by the more careful drawing of franchises so that the rights of the citizens will be better secured.

The invention of the automobile has introduced a new factor in the question of municipal transportation. In the smaller towns the almost universal ownership of cars by private residents has probably to some extent discouraged the construction or extension of street car lines. Jitney and taxi cars have supplemented the regular transportation systems. Such cars are, of course, subject to public regulation.

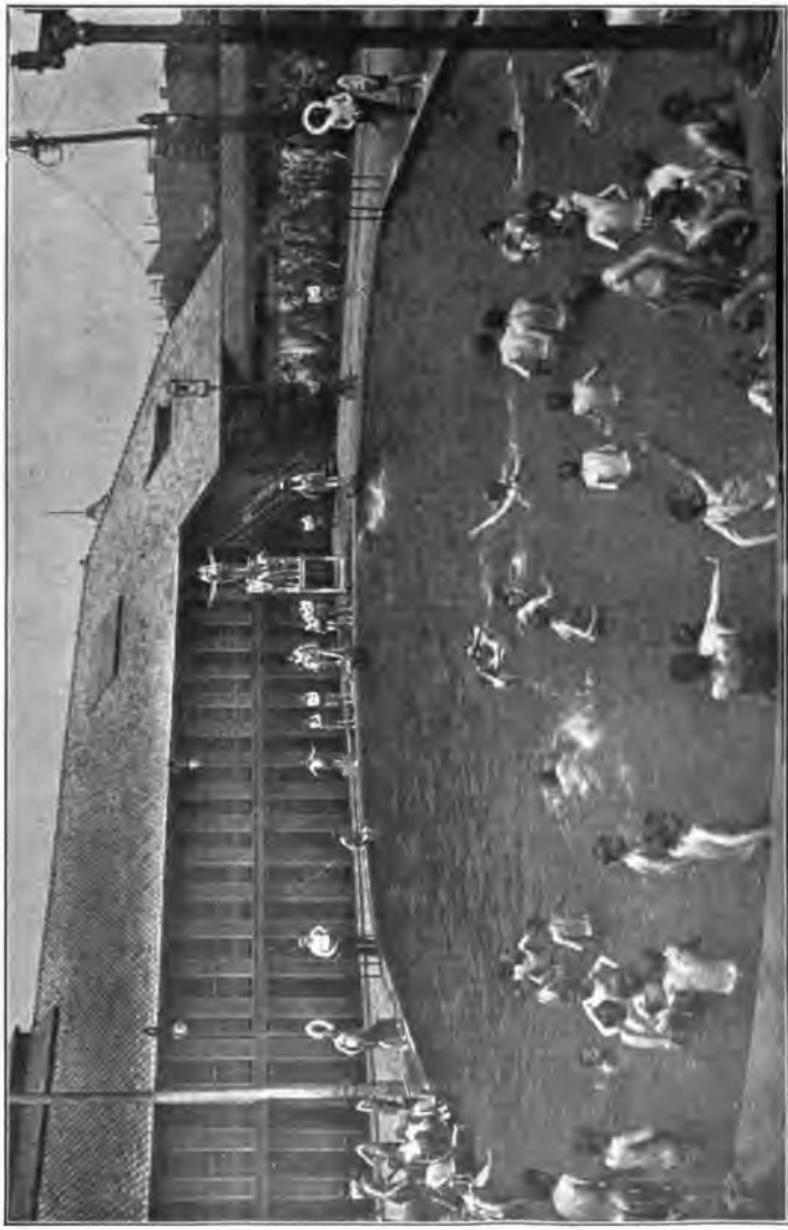
**278. Telephone Systems.**—Telephone systems are probably all privately owned. In some cities two competitive sys-

tems have been permitted, but this has been found unsatisfactory and the single system is the rule. Proper service and fair rates are secured by regulation. The telephone service is peculiar in that it is not wholly local, the long-distance service connecting the local system with the outside world. The telephone system is often interurban, the same corporation supplying several municipalities, as in the case of electric service.

**279. Parks and Recreation.**—Public parks, squares, and open spaces for the use and enjoyment of the people are universally found in American cities, though some cities have developed their park systems to a far greater extent than others. Such places have been aptly described as the lungs of the city. In some of the larger cities hundreds of acres are set apart as public parks, there being one or more main parks and smaller parks distributed throughout the city. The largest single city park is Fairmount Park in Philadelphia, which has an area of 3,526 acres. Central Park in New York contains 843 acres. The park system of Chicago contains 3,815 acres, and that of Denver, 3,719 acres.

The total number of city parks in the United States probably exceeds 4,000. Washington, D. C., has over 400 parks. The larger parks sometimes contain splendid collections of wild animals, also greenhouses and conservatories, and perhaps art galleries and museums. Lakes and forests are intermingled with open stretches of lawn and flower beds. Some cities—for example, Boston, Cleveland, and Newark—have forestry departments having charge of the planting and care of shade-trees in the streets and parks. Altogether these parks afford almost unlimited sources of entertainment, instruction, and enjoyment.

Modern cities are making more and more provision for recreation and play. Play of children, which was once little more than tolerated or taken as a matter of course, is now recognized as necessary to their proper development and worthy of careful direction and encouragement. Even for adults the recreational value of play is being increasingly appreciated.



A COMMUNITY SWIMMING POOL IN ONE OF OUR LARGE CITIES.

Some slight provision has long been made in school yards and in the parks for children's play, but it is only within the past quarter-century that making real provision for public recreation has come to be regarded as a municipal function or duty. Now tennis courts and even golf links are found in the larger parks, and special playgrounds for children have been established by the hundreds. Practically all of the cities of 30,000 population or over now maintain playgrounds under paid supervision, and there is a national organization for promoting this movement.

These playgrounds are provided with sand piles, wading pools, swings, tennis courts, and ball fields, which in winter may be converted into skating rinks, and various other means of recreation and amusement. What such things mean to children who might otherwise have only the streets to play in may well be imagined. The influence of playgrounds in preventing juvenile delinquency is very marked.\* "The making of a people's park or playground," wrote Jacob Riis, "has invariably been followed by a decrease of ruffianism and gang violence. The boy would rather be good than bad; he would rather play than fight the police." Besides playgrounds for children, cities provide entertainment in the parks for persons of all ages, such as band concerts, moving picture shows, fireworks, community Christmas trees, etc. Municipal beaches for bathing have been opened in some cities which have water fronts.

\* "Many, possibly most, of the offenses of children in large cities spring from a wholesome and natural desire for play, a desire which cannot be satisfied in the city streets. Arrested for some trivial offense and brought in touch with the police court, children take pride in their notoriety or the experience, or are hardened by contact with it. Twenty-five per cent of the children brought before the juvenile court in New York were charged with disorderly conduct, which consisted frequently in playing ball, or 'cat,' or some other sport in the streets which is forbidden by law. The transition from these trivial offenses to the graver ones is easy, and without doubt a large part of the juvenile offenders are led on to crime by the indiscriminate arrests and contact with vice through the police courts. Even the gang is a product of misdirected play instinct."—Howe, "The Modern City and Its Problems," 307.

**280. Making the City Attractive to Live in.**—The first duty of the people of a city is, of course, to provide for their necessities. Otherwise life is impossible. Shelter, food, health, and safety come before what may be called the higher things of life. Then follow schools, libraries, art galleries, music, and play. The cultivation of the artistic and beautiful belongs to the maturity of cities, and is becoming increasingly evident in American life. City improvement societies under one name and another are at work everywhere to make the city a more beautiful and attractive place to live in. Better architecture for public buildings and private homes; beautiful bridges in place of unsightly ones; green grass or flowers in place of the dump heap; the abolishment of the smoke nuisance, unnecessary noises, and billboards; these and other things for the uplifting of city life are now being worked for in cities all over this country. How and what may be accomplished in this line by community co-operation is shown by the experience of Merion, Pennsylvania, as told by Mr. Edward Bok, formerly editor of *The Ladies' Home Journal*. He writes:<sup>\*</sup>

Merion, where he lived, was one of the most beautiful of the many suburbs that surround the Quaker City; but, like hundreds of similar communities, there had been developed in it no civic interest. Some of the most successful business men of Philadelphia lived in Merion; they had beautiful estates, which they maintained without regard to expense, but also without regard to the community as a whole. They were busy men; they came home tired after a day in the city; they considered themselves good citizens if they kept their own places sightly, but the idea of devoting their evenings to the problems of their community had never occurred to them before the evening when two of Bok's neighbors called to ask his help in forming a civic association. A canvass of the sentiment of the neighborhood revealed the unanimous opinion that the experiment, if attempted, would be a failure—an attitude not by any means confined to the residents of Merion! Bok decided to test it out; he called together twenty of his neighbors, put the suggestion before them and asked for two thousand dollars as a start, so that a paid secretary might be engaged, since the men themselves were too busy to attend to the details of the work.

\* "The Americanization of Edward Bok," 360-364.

The amount was immediately subscribed, and in 1913 The Merion Civic Association applied for a charter and began its existence.

The leading men in the community were elected as a Board of Directors, and a salaried secretary was engaged to carry out the directions of the Board. The association adopted the motto: "To be nation right, and state right, we must first be community right." Three objectives were selected with which to attract community interest and membership: Safety to life, in the form of proper police protection; safety to property, in the form of adequate hydrant and fire-engine service; and safety to health, in careful supervision of the water and milk used in the community. "The three S's," as they were called, brought an immediate response. They were practical in their appeal, and members began to come in. The police force was increased from one officer at night and none in the day, to three at night and two during the day, and to this the Association added two special night officers of its own. Private detectives were intermittently brought in to "check up," and see that the service was vigilant. A fire hydrant was placed within seven hundred feet of every house, with the insurance rates reduced from twelve and one-half to thirty per cent; the services of three fire-engine companies was arranged for. Fire-gongs were introduced into the community to guard against danger from interruption of telephone service. The water-supply was chemically analyzed each month and the milk-supply carefully scrutinized. One hundred and fifty new electric light posts specially designed, and pronounced by experts as the most beautiful and practical road lamps ever introduced into any community, were erected, making Merion the best-lighted community in its vicinity.

At every corner was erected an artistically designed cast-iron road sign; instead of the unsightly wooden ones, cast-iron automobile warnings were placed at every dangerous spot; community bulletin-boards, preventing the display of notices on trees and poles, were placed at the railroad station; litter-cans were distributed over the entire community; a new railroad station and post-office were secured; the station grounds were laid out as a garden by a landscape architect; new roads of permanent construction, from curb to curb, were laid down; uniform tree-planting along the roads was introduced; bird houses were made and sold, so as to attract bird life to the community; toll gates were abolished along the two main arteries of travel; the removal of all telegraph and telephone poles was begun; an efficient Boy Scout troop was organized, and an American Legion post; the automobile speed limit was reduced from twenty-four to fifteen miles as a protection to children; roads were regularly swept, cleaned, and oiled, and uniform sidewalks advocated and secured. . . . Perhaps no other

suburban civic effort proves the efficiency of community co-operation so well as does the seven years' work of The Merion Civic Association. It is a practical demonstration of what a community can do for itself by concerted action. It preached from the very start, the gospel of united service; it translated into actual practice the doctrine of being one's brother's keeper, and it taught the invaluable habit of collective action. The Association has no legal powers; it rules solely by persuasion; it accomplishes by the power of combination; by a spirit of the community for the community.

### Questions

1. Mention some of the community problems that exist in a city that either do not exist or exist only to a slight extent in the country.
2. How was your city laid out? Has it a civic centre? a public library? a public park?
3. How many policemen are there in your city? What do they do?
4. How is the fire department in your city supported? Is your school building so constructed that the pupils could get out safely in case of fire?
5. How is your city kept clean?
6. Is there a housing problem in your city? Are there "slums"?
7. Which of the features mentioned in the text in the section on public schools are found in your school?
8. Which of the municipal public utilities are found in your city? Are they owned and operated by the city or by private corporations?
9. What is being done by the public in your city to make the place attractive to live in? Is there a Board of Trade or Chamber of Commerce? a Civic League? a Rotary Club?

## *PART IV*

### SPECIAL TOPICS

#### CHAPTER XXVIII

##### THE PEOPLE OF THE UNITED STATES

281. **The Old Immigration.**—The people of the United States, with the exception of about 335,000 Indians, are all of either foreign birth or foreign ancestry. In 1920 there were about 14,000,000 persons of foreign birth in the United States, or nearly one-eighth of the total population. All the rest were descended from foreign ancestors. These ancestors came from various European countries so that the native Americans are of mixed stock. But there is a very great difference between the earlier and the later immigration that has peopled this country. For nearly three hundred years immigration was almost entirely from the British Islands, mainly from England and Scotland. In the second half of the nineteenth century many Germans, Irish, and Scandinavians came to this country. Not taking into account the negroes, who were involuntary immigrants, all the immigration up to near the close of the nineteenth century, with very few exceptions, were of about the same racial stock, namely, the Anglo-Saxon, and the people of the United States were almost solidly Anglo-Saxon. Except for the negroes, there was no race problem. All the whites freely intermarried and blended into a strong homogeneous American race.

In the main, the people of this “old immigration” settled on the land and built up an agricultural civilization, moving gradually westward as the lands near the Atlantic coast were taken up. They did not congregate in great cities. It was they that cleared the wilderness and opened up to civilization

the vast resources of this country, driving before them the savages and the wild animals, and braving discomfort, hardship, and danger in making this country the finest place in the world to live in. These were the people also who resisted tyranny and demanded and won for themselves and their posterity the blessings of liberty, and set up in the world the first democratic republic. It is their civilization and their political achievements that have excited the envy and the admiration of the civilized world. These were the American people of forty years ago.

**282. The New Immigration.**—The old immigration established in this country an Anglo-Saxon and agricultural civilization. The people came in search of new homes on the free lands of this great continent. But by 1890 most of the available free lands had been taken up, and a homestead could no longer be had for the asking. Also, the great industrial era was beginning in this country. The old immigration practically ceased and a new immigration from central, southern, and eastern Europe began. The immigrants were not only foreigners but of alien races. About 95 per cent of all the immigrants who came to this country before 1883 came from Great Britain, Germany, France, the Netherlands, Belgium, Denmark, Norway, and Sweden. From 1883 to 1907, 81 per cent of the total European immigration came from Austria-Hungary, Russia, Italy, Greece, Bulgaria, Rumania, Serbia, Montenegro, Poland, Spain, Portugal, and Turkey. It is stated that in recent years more immigrants have come to this country from any one of either Austria-Hungary, Italy, or Russia than from all the northern European countries together that furnished the bulk of the old immigration.

Moreover, the new immigration has generally been of a different type from the old. The new immigration has consisted mainly of the lower classes, most of them very poor and many of them destitute when they landed. And, although in their old homes they had usually belonged to the agricultural classes, they were unable to obtain land here because the free lands

were gone, and, being also without capital, they generally had to become laborers without homes of their own. This forced them into the large cities and mining camps where employment was to be had. Thus this country has been flooded with hundreds of thousands of immigrants who, because of differ-



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IMMIGRANTS ARRIVING IN NEW YORK CITY.

ences in race, religion, ideals, and standards of living cannot be easily assimilated, and who often remain practically foreigners, enjoying the benefits of American civilization but without any adequate appreciation of American institutions and ideals. They tend to congregate in colonies in the large cities, retaining their native language and many of their native customs. Some even of the newer immigrants have become fully Americanized and make good citizens, but many do not. The

presence of these unassimilated foreigners has given rise to some of the most troublesome problems now before the American people. From among them have come most of the anarchists and agitators who have so seriously disturbed the social and economic life of the country. Such persons are "enemies within our gates," and all such should be rigidly excluded if we are to preserve intact the civilization which has been built up by the fathers of the republic.

**283. Immigration Laws.**—The power to regulate immigration is not specifically granted to Congress by the Constitution, but it is well settled that Congress has full power over the subject. The regulation of immigration is a regulation of foreign commerce, and therefore comes under the commerce clause, but the power to regulate immigration may also be implied from the general control given to the federal government over foreign relations. Congress has power to admit or exclude aliens as it sees fit, and has also power to deport undesirable aliens, or require aliens to behave themselves as a condition of being permitted to remain in this country.

For nearly a century after the adoption of the Constitution it was the national policy to encourage immigration. There were vast stretches of unoccupied lands and the country needed settlers. Naturally the Americans welcomed newcomers, especially as they were of their own race and kind. During almost the entire period of the old immigration every encouragement was held out to the immigrant. Among other things an almost sentimental enthusiasm for liberty and democratic institutions became responsible for the doctrine that America should be the haven of refuge for the oppressed of all lands, particularly those fleeing from political and religious oppression. Some few of this sort did in fact find a refuge here, such as refugees from the unsuccessful German revolution of 1848, but probably no great number came for such reasons. Instead of being a refuge, this country has become in later years to some extent a dumping-ground for aliens who were not wanted at home. About fifty years ago some European nations began to pardon persons

convicted of murder and other infamous crimes on condition that they would emigrate to the United States, and also made a practice of assisting their paupers, idiots, insane, and diseased persons to emigrate to this country. This led to restrictive legislation. In 1882 the first restrictive law was passed. This



© Ewing Galloway.

A CLASS IN ENGLISH FOR FOREIGNERS.

forbade convicts, lunatics, idiots, paupers, and persons likely to become a public charge to land.

The present law, passed in 1917, excludes all such and also diseased persons, polygamists, anarchists, and criminals of various sorts. It also excludes all persons, with some exceptions, over sixteen years of age who cannot read some language. Thus it will keep out the ignorant masses of aliens who form the material upon which the radical and anarchist works. It is stated that 98 per cent of the strikers in the steel strike of

1919 were alien born. Without the ignorant aliens to work on the radical agitator could do little harm.

Until 1921 no attempt was made to limit the *number* of aliens who may enter this country, but the experiences with "hyphenated Americans" during the World War intensified the demand for such restriction, which was begun by the temporary act of 1921 admitting during the year aliens from any particular country only up to 3 per cent of the number from that country already in the United States.

**284. Chinese and Japanese.**—Of all the foreigners who have come to this country probably none, except the negroes, are so incapable of assimilation with the Anglo-Saxon as the Chinese and Japanese. Physically, mentally, and in point of view these races are so different from the Anglo-Saxon that it seems impossible for them to meet on a common plane of American citizenship.

The first Chinese came to this country in 1849 just after the discovery of gold in California. They were welcomed as laborers and in that capacity helped in the development of the country. In 1860 there were about 35,000 Chinese in the United States, nearly all in California. Their extraordinary industry and low standards of living enabled them to compete unfavorably with white labor, with the result that in 1882 the Chinese Exclusion Act was passed shutting out Chinese laborers. A similar act is still in force. In 1890 there were about 107,000 Chinese in this country, but since then their number has been steadily declining. In 1910 the number was only 57,000.

There was no considerable Japanese immigration to this country until about twenty years ago. The total number of Japanese in the United States in 1900 was about 25,000. Then immigration increased and in 1910 there were about 68,000. Like the Chinese, the Japanese settled mostly on the Pacific coast. For much the same reasons a strong opposition to them developed there, as against the Chinese, especially in California, and the exclusion of Japanese was demanded. In Cali-

fornia the anti-Japanese sentiment manifested itself in school laws and land laws. The Japanese Government took the matter up with the federal government, and the matter was adjusted after a fashion. A "gentlemen's agreement" was entered into in 1907 by which the Japanese Government agreed not to issue passports to Japanese laborers to come to the United States. Congress did not pass a Japanese exclusion law similar to that excluding the Chinese, but the "gentlemen's agreement" has had about the same effect. However, many Japanese women have been allowed to come to this country as the wives of Japanese already here, the marriages having been arranged by the parents by proxy in Japan to be followed by a marriage in American fashion upon their arrival here. Since husband and wife became acquainted only through photographs, such brides are known as "picture brides." About 4,000 such brides arrived in 1920, but the practice has now been stopped. The Japanese question is still one of the liveliest interest on the Pacific coast.

**285. The Negroes.**—The oldest, biggest, and most permanent race problem in this country is that caused by the presence of about 10,000,000 negroes, constituting about one-third of the population of the South and one-tenth of the total population of the United States. Unlike other races, the negroes did not come here of their own accord, but were brought by the whites, mostly as slaves. For various reasons, mainly economic, the great majority of the negroes have always lived in the South. When brought to America the negroes were ignorant savages. In slavery were laid the foundations of training and character which have made possible the great progress of the negroes since the slaves were freed in 1865.

Since the Civil War many negroes have gone to Northern and Western states, especially to the cities, but the South still remains their principal home. The negroes have made great progress in education and material prosperity since the Civil War. In this they have been greatly helped by the whites.

About a century ago an attempt was begun to colonize the negroes of the South in Liberia in Africa. It has not succeeded. The negroes do not wish to leave this country. They have prospered here, and thousands of negro workmen in the United States live better than chiefs in Africa.\*

In a special sense the negro problem is a Southern problem, for in the South the negroes are most numerous; but it is also a national problem, for negroes are widely scattered, and also any problem that concerns a great section of the country is bound to affect the whole nation. Leaders of the race, such as Booker T. Washington and his successor, Robert R. Moton, have urged the negroes to make the most of themselves as negroes, advancing by industry, thrift, and education in the material and higher things of life. Along these lines the whites are offering every encouragement and rapid progress is being made.

In slavery times there was much personal contact between the whites and the slaves, especially those about the family home. The white mistresses personally looked after clothing the slaves, old and young, and ministered to them in sickness. The black "mammy" who nursed the white children was an attractive Southern institution, and white and black children freely played together.

Now the whites and negroes live apart. Although the negroes receive much help of one sort or another from the whites, they are living, as a race, their separate lives.

\* About one-third of the inhabitants of the Virginia town in which the writer lives are negroes. They live in complete harmony with the whites, and there is a good deal of mutual kindness between the races. The negro has the same chance as the white man in commercial and industrial life. Whites and negroes work side by side as mechanics and laborers without friction, yet there is no "social equality." Many of the negroes own attractive homes, some of them provided with bathrooms, furnaces, and electric lights. One of the three meat-shops in the town is owned by a negro and is patronized by the whites. The negroes have two good brick churches, equipped with pipe organs. Negroes of both sexes vote without the slightest interference. Here the negro problem seems to have been solved, so far as it can be solved while the two races live in the same community.

**286. The Indians.**—The Indians, who are the descendants of the original inhabitants of this continent, number about 335,000, of whom about one-half are of full blood. The tribal Indians are not technically a part of the political body known as the "people of the United States," nor are they foreign nations or persons. Their position is a peculiar one, they being regarded as "wards of the nation," and cared for and controlled as such. The status of particular tribes differs somewhat according to their number, situation, or circumstances. Thus the Seneca Nation in New York state is a public corporation, and is recognized by both the state and federal governments as a distinct community. The Pueblo Indians of New Mexico and the Yuma Indians of California are not recognized as maintaining a tribal character. So also of other small and isolated bodies of Indians. The Five Civilized Tribes of Oklahoma have well-developed tribal governments. In dealing with the Indian tribes the United States Government so far recognized their nationality as to make treaties with them until 1871, but since that time Indian affairs have been regulated by act of Congress and by contracts with the Indian tribes.

Tribal Indians are not usually citizens of the United States, but under various statutes certain Indians have been admitted to citizenship. Laws provide for the allotment of land to individual Indians and their absorption into the general population upon their severance of their tribal relations and adoption of the habits of civilized life. Contrary to a common impression on the subject, the Indians are not a "vanishing race," but are possibly more numerous than when this country was discovered. They have substantially increased in number during the past few years.

From time to time the Indian tribes in the Eastern and Southern states have been removed to reservations in the West and Southwest. The United States Government has always dealt generously with the Indians. The Indians never really occupied and made use of the land over which they roamed, except to a very limited extent, but when the development of

the country by the whites made necessary the removal of the Indians from their original homes to reservations, they received in return for the lands they occupied other lands and money. Large sums derived from the sales of their lands are administered by the government as trust funds for their benefit. Several million dollars are appropriated annually for the education and support of the Indians, but they are not taxed.\* Although the Indians are not an industrious or thrifty people, and contribute little to the national wealth, they are, through the fostering care of the government, in many cases individually and collectively a wealthy people. The value of the oil interests alone of some of the tribes amounts to hundreds of millions of dollars.†

The management of Indian affairs belongs to the Department of the Interior. There is a commissioner of Indian affairs and a board of Indian commissioners. This board is a body of unpaid citizens appointed by the President, which in a visitatorial and advisory capacity co-operates with the commissioner in the administration of Indian affairs.

\* In 1919 the government spent for Indian affairs \$33,320,447, of which about two-thirds was money belonging to the Indians and handled by the government for them. But the actual expense to the taxpayers of the country was \$10,218,327. In short, the Indians, though as able-bodied as anybody and occupying fertile lands, do not support themselves and pay no taxes. The amount of land reserved for Indians allows about 150 acres for each individual of the entire Indian population, though many Indians do not live on reservations.

† The Five Civilized Tribes of Oklahoma, numbering 101,506 persons, in 1919, owned tribal property valued at \$19,398,615 and individual property amounting to \$182,187,450 (total, \$201,586,065), besides oil and gas interests estimated at \$850,000,000. The Osage tribe in Oklahoma, numbering 2,154, owned individually property valued at \$16,182,861, with oil and gas rights estimated at \$700,000,000, besides a trust fund of \$7,038,474, held by the government for the tribe. Not counting their oil and gas rights, they are worth about \$10,000 per capita, and, assuming that the estimated value of the oil and gas is correct, they are worth over \$300,000 per capita. The total amount accruing to the tribe from oil and gas leases during the fiscal year ending June 30, 1919, was approximately \$17,000,000, or about \$7,500 for every individual in the tribe. They are probably the richest people in the world.

**Questions**

1. From what countries did the "old immigration" into this country mainly come? Were the peoples of these countries of the same racial stock? What did they do after they reached this country?
2. From what countries have most of the immigrants in recent years come? Do they readily assimilate with Americans? Are the recent immigrants of as high a class as the earlier ones? What do they do here?
3. Why do the recent immigrants so often constitute a menace to American institutions and ideals? Is it the duty of the people of the United States to receive into their midst any one who may wish to come here regardless of whether or not he will make a good citizen? What percentage of the population of your state are of foreign birth?
4. Should we restrict immigration from England? Russia? Scotland? Ireland? Turkey? Italy? France? Norway? Holland? Greece? Bulgaria? Africa? China? Japan?
5. Do you think the President did right in vetoing the immigration bill of 1917 because of the provision excluding illiterates?
6. What are the two fundamental principles of the position of the white people of the South on the negro problem? Are the negroes given a "square deal" in your community?
7. Putting the original number of Indians in this country at 1,000,000 (a high estimate), can it be truly said that they owned the land upon which more than 100,000,000 persons now live without crowding? Do you think the Indians would be better off if instead of being supported by the government they had to work for a living?

## CHAPTER XXIX

### NATURAL RESOURCES OF THE UNITED STATES

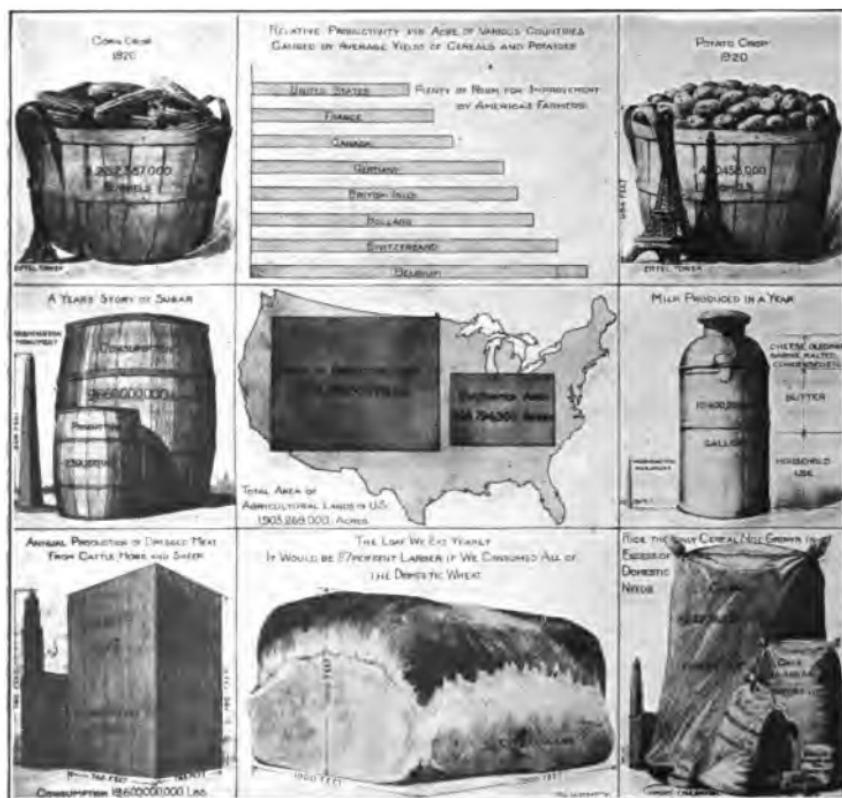
**287. In General.**—With the possible exception of Russia, no country in the world is so rich in natural resources as the United States. The productive resources of the country consist mainly of the soil, the forests, minerals, and water-power. The varieties of animal life—the wild animals, the birds, fish, and other inhabitants of the waters—are also important. This chapter will contain a brief description of the natural resources of this country and some account of what is being done to use, develop, and conserve them.\*

**288. The Land.**—The great fundamental resource of the nation is the land. It supports almost all vegetable and animal life, and from it comes most of our food and clothing. The sea and the lakes and streams are an important source of food and some other things useful to man, but in comparison with what the land supplies the products of the waters of the earth are of small consequence. The land contains our mineral resources and upon its surface grow the forests, but we shall first consider it with reference to the soil itself.

The United States is immensely rich in soil of great variety and fertility. So long as a nation has enough fertile land, there is no danger that the people will suffer for food and clothing. Some nations have not enough land, and find their population crowding upon their territory to such an extent that the problem of getting enough to eat threatens to become a serious one. It is stated that the population of the world has increased 70

\* The most important authorities on the natural resources of the country are the various government reports. In the preparation of this chapter I have made considerable use of Doctor Van Hise's "Conservation of Natural Resources in the United States."

per cent since 1850. At this rate it will in 1950 be double what it was in 1850. There has been almost no immigration to Japan, yet the population of the little island empire has increased 50 per cent in the past fifty years, and it now has



*Courtesy of the Scientific American.*

**CHART SHOWING OUR FOOD PRODUCTIONS, COMPARED WITH OTHER COUNTRIES.**

about half as many people as the United States with an area less than that of the state of California. Is it any wonder that Japan is looking for some outlet for its surplus population? Without land nations cannot live. But the land must be taken care of, for its productivity may be easily impaired or destroyed. Improper methods of cultivation may exhaust

its fertility, or the soil may be washed away by rains and floods when stripped of its natural protective covering of forest.

The total area of the United States is 3,026,789 square miles, and that of Alaska 590,884. Adding the Philippines, Porto Rico, and the various other possessions, the total area under the control of the United States is 3,743,344 square miles, or about two and one-third *billion* acres (2,395,740,160). The area of Texas alone is greater than the combined areas of France, Belgium, the Netherlands, and Denmark. California is a little larger than Italy and Greece put together. There is no danger that the people of the United States will starve if they take care of what they have.

**289. The Public Lands.**—When the original settlers came to this country they found vast regions over which scattered tribes of Indians had established their villages here and there or roamed at large. Very little of the land was permanently occupied, and, although estimates vary greatly as to the number of the Indians, the entire original population was not sufficient to have really occupied or used more than a small fraction of the total area of the country. Most of it was unoccupied. The lands on the Atlantic coast soon passed from the Indians into the hands of the whites as fast as they were needed by the latter. In colonial times large grants were made by the British crown to individuals.

At the time of the adoption of the Constitution great tracts lying to the west which were claimed by the several states were ceded by them to the United States, and constituted the public domain. At the beginning of the nineteenth century this is said to have amounted to about 400,000 square miles. Great accessions to the public domain were made by the purchases from France, Spain, Mexico, and Russia. The vast territory west of the Mississippi belonged to the United States, and the entire public domain, excluding Alaska, amounted to more than two and one-quarter million square miles, or about 1,440,-000,000 acres. This was the property of the United States, which was doubtless the largest landowner in history.

More than half of the public domain has been disposed of by the government to states, railroads, individuals, or otherwise. Up to 1909 the total grants to individuals and corporations amounted to about 572,000,000 acres; about 154,000,000 acres had been granted to states; about 325,000,000 acres were reserved as national parks and forests, Indian reservations, mineral lands, etc., and about 363,000,000 acres remained unappropriated and unreserved.

The early land laws provided for grants to settlers on extremely liberal terms. The land was worth more to the country with settlers on it than unoccupied. For a long time a homestead could be had almost for the asking, and the old song was: "Uncle Sam is rich enough to give us all a farm." There were no doubt many abuses; valuable farming and mineral lands were practically given away, and much of the land got into the hands of speculators rather than actual settlers. Enormous grants were made to railroad companies, but this was not unreasonable, for a railroad across the continent was greatly needed, and without help from the government could hardly have been built. Although mistakes were made in disposing of the public lands, the general result was good, for thereby the settlement and development of the country was made possible. This means that larger taxes are paid to the government, which in this way wins out in the end.

The lavish disposal of land and other national resources has at last stopped. Formerly agricultural lands, minerals, timber, and water-power sites on the public domain were passing rapidly from public to private ownership. But with the development of the conservation movement in 1909, under the leadership of President Roosevelt, this was changed. Most of the forests still owned by the nation, nearly 150,000,000 acres, were withdrawn from private entry and made national forests. More than 80,000,000 acres of coal land in the Western states and Alaska, 1,500,000 acres for water-power sites, and 4,700,000 acres of phosphate lands were also withdrawn. Altogether, during President Roosevelt's administration, more

*From a photograph by U. S. Forest Service.*

**FIGHTING A FOREST FIRE.**

Forest fires in the United States annually destroy hundreds of thousands of acres of timber land amounting in value to more than \$20,000,000.



than 234,000,000 acres of land were withdrawn from private entry, most of which is to remain the permanent property of the nation.

**290. The Forests.**—The original forests of the United States were more extensive and valuable than those of any other nation. They contained at least 850,000,000 acres of merchantable saw timber, and enough scrubby growth to bring the total forest area of the United States to about 1,000,000,000 acres, or about one-half of the total area of the country. Probably more than half of this is now gone, and the annual cutting exceeds the annual growth. Much of the forest had to be cut to clear the land for farming purposes; the trees were in the way. The destruction of the forests in the early days for this purpose can scarcely be called waste. But for many years the cutting has been mainly for timber. In this there has been great waste in both cutting and manufacture. It has been estimated that only three-eighths of the timber as it stands finally goes into the manufactured product. Also there has been and still is an appalling loss by forest fires, almost all of which is unnecessary. The carelessness of campers in not properly extinguishing their camp fires has often caused destructive fires. Up to a few years ago it was estimated that the timber destroyed by forest fires about equalled the timber cut.

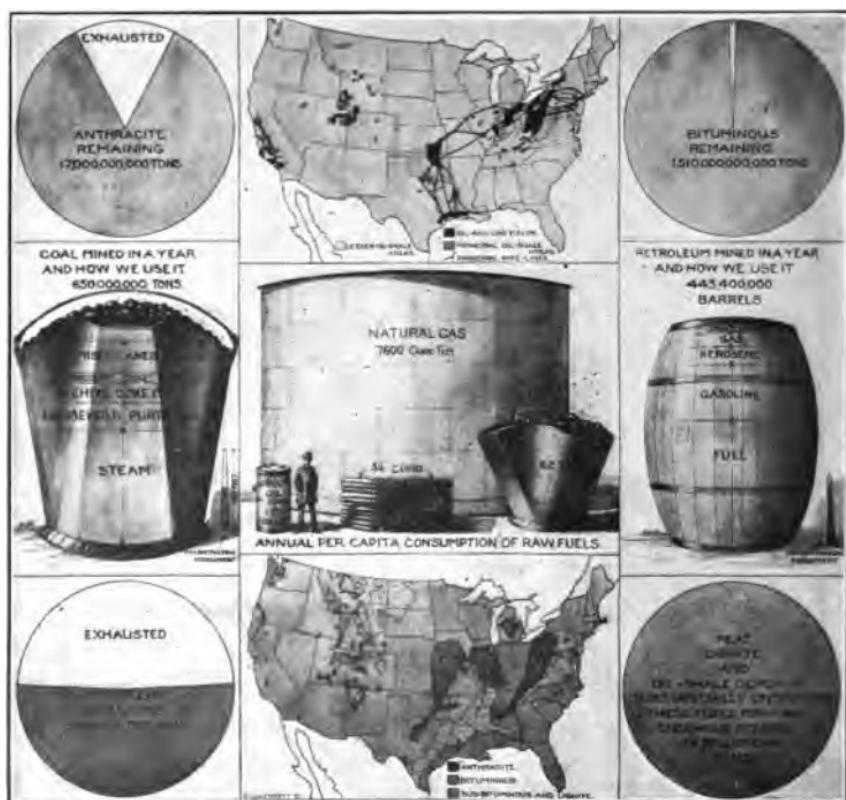
The forest resources of the United States are still very great. In 1910 about one-fifth of the forest area belonged to the public and four-fifths was privately owned. In recent years the federal government has been buying large tracts of mountain forest lands in the Eastern states for the double purpose of conserving the timber supply and protecting the watersheds. The cutting of the forests denudes the land of its protective covering, with the result that, instead of soaking in and running off gradually, the rainfall rushes off, doing little good to crops, washing the soil away and destroying the land for farming purposes, and causing destructive floods in the streams. Both state and federal governments are now taking steps to protect the watersheds by preserving the forests.

The United States Government has reserved a considerable part of the original forest area as national forests. There are about 150 of these with an aggregate area of about 160,000,000 acres, besides the bodies of forest lands recently purchased in the Eastern states. The national forests are in charge of the Forest Service of the Department of Agriculture. Several thousand men, or "rangers," are employed to look after the forests, watching for fires, planting new trees, etc. Many of the states also own important forest areas and have forestry departments.

By proper methods of conservation it is possible to avoid much of the waste and loss now going on, and also to promote timber growth so as to make forests more productive, so that the danger of a timber famine can be averted. Permanent forests may be maintained from which the cuttings are replaced by new growth. Denuded areas may be reforested by setting out seedlings. It takes timber-trees a long time to grow, but the state or the nation can afford to wait. Quoting from a circular of the Forest Service: "By reasonable thrift we can produce a constant timber supply beyond our present need, and with it conserve the usefulness of our streams for irrigation, water supply, navigation, and power. Under right management our forests will yield over four times as much as now. . . . We can practically stop forest fires at a total yearly cost of one-fifth the value of the standing timber burned each year. We shall suffer for timber to meet our needs until our forests have had time to grow again. But if we act vigorously and at once, we shall escape permanent timber scarcity."

**291. Mineral Resources.**—The mineral resources of the United States far exceed those of any other nation. They fall into three classes: mineral fuels, the metals, and the non-metallic mineral substances. The fuels are coal, peat, petroleum, and natural gas. These are permanently exhausted with the using. Natural gas is already giving out, having been most wastefully consumed. The coal deposits are immense and well distributed, there being few places in the United States which are not with-

in 500 miles of a coal deposit. Unfortunately, the government allowed great and enormously valuable coal areas to get into private hands without reference to the coal underlying the sur-



*Courtesy of the Scientific American.*

**CHART SHOWING OUR RESOURCES AND HOW WE ARE  
USING THEM.**

face. The remaining coal lands, which are extensive, are being held or developed for the benefit of the people. The vast coal deposits of Alaska have been withdrawn from private entry. Conservation includes the avoidance of waste in the mining and use of coal, and the use of substitutes; for example, electricity developed by water power. The deposits of peat in this country are extensive, but so far, owing to the abundance

of coal, peat has not been much used. The petroleum deposits are immense, but the enormous use, especially since the invention of the gasoline-engine and the automobile, is already giving concern as to how long the supply may last. The maintenance of the petroleum supply is one of the world's great problems. Alcohol, which can be produced without limit from vegetation, has been suggested as a possible substitute.

The metallic resources, iron, copper, lead, zinc, gold, silver, etc., are great sources of national wealth. Aluminum, which has late come into common use, is the most abundant of the metals, but the cost of extraction is still high, which greatly restricts its use. The non-metallic resources, such as building stone, cement, slate, clay, gravel, salt, sulphur, asbestos, asphalt, etc., are many of them inexhaustible.

**292. Water Power.**—Coal once burned is gone, but the running water in the streams is forever being renewed. Falling or running water is probably the oldest source of power employed by man. As in other resources, the United States is rich in water power. Some years ago the statement was made that the amount of water power that could be developed from the streams of this country, taken at the period of their *minimum* flow, "exceeds our entire mechanical power in use, would operate every mill, drive every spindle, propel every train and boat, and light every city, town, and village in the country." This refers to the absolute amount of power, and does not take into account that much of it would be lost in transmission to the place of use.

The use of water power was confined to small plants so long as it was necessary to use the power at its source, but the introduction of electricity and long-distance transmission has greatly increased the range of the use of water power and given impetus to water power development. In some of the Western states electric power generated by water is transmitted 200 to 300 miles. A general use of water power would reduce the drain on the coal supply of the country.

The principal public question in this connection is that of

control. Much of the available water power has gotten into the hands of private corporations. For them to have a monopoly of water power, or to hold needed power idle for speculation, is certainly not to be desired. Greater care is now being exercised by the government in conserving for the public the remaining water power on the public domain, and public regulation of privately owned hydro-electric plants is protecting the public from the evils of monopoly.

**293. National Parks.**—As in other resources, the United States is rich in natural scenery and interesting natural areas and objects. An attractive feature of conservation is the preservation for the public enjoyment of places of special scenic and recreational interest by their conversion into public parks. Many national parks have been established by the federal government, and the states are giving some attention to the subject. The national parks are areas which Congress has set apart, because of extraordinary scenic beauty, remarkable natural phenomena, or other unusual qualification, for the use and enjoyment of the people.

They are not parks in the ordinary sense of that term, improved by man, but large areas which nature has made beautiful or interesting. By the construction of roads, hotels, etc., they are made accessible to tourists. There are now about twenty of these parks. The first to be established was the Hot Springs Reservation in Arkansas, which was created in 1832. Among the best known are the Yellowstone Park in Wyoming; the Yosemite Park in California, and the Sequoia Park, with the giant redwood trees, in the same state; the Rocky Mountain Park and the Mesa Verde, with its famous cliff dweller ruins, in Colorado. Interesting spots set apart as national "monuments" are the Casa Grande ruin in Arizona, the El Morro Monument in New Mexico, the Grand Canyon in Arizona, and others.

The National Park Service was established in 1916 as an agency of the Department of the Interior. Its director is charged with the supervision and administration of the national



**YELLOWSTONE PARK.**  
**Looking down the canyon from above the falls.**

parks and monuments. Beautifully illustrated descriptive portfolios of the various national parks and monuments may be obtained from the director of the National Park Service, Washington, D. C.

**294. The Conservation Movement.**—The vast extent of the natural resources of the United States naturally produced a feeling among the people that these resources were practically inexhaustible. The forests were even in the way, and great areas of forests were burned or otherwise destroyed to make way for agriculture. There seemed to be no end of the rich free land of the West. The exploitation and development of our natural resources as fast as possible seemed to be the proper thing. But near the close of the nineteenth century scientific men and other thoughtful observers began to call attention to the unwisdom of this course. The removal of the forests from the mountains and watersheds of France, Spain, Palestine, and China had not only produced a scarcity of fuel in those countries, but in some sections had caused the destruction of the soil itself. The unprotected soil washed away, leaving bare rocks where once had been abundant vegetation, and the débris carried down by the water from the highlands had destroyed rich low grounds and choked and befouled the streams. With this came destructive floods, as the rainfall and melting snows, no longer checked by vegetation and the forests, rushed from the barren hillsides in torrents. In China in the deforested areas famine was common. Might the United States come to this?

Gradually, through the influence of the warnings of scientific men, the people of this country began to take notice of the situation and found that they were wasting their heritage. The forests were going; natural gas was on the way to exhaustion; calculations were being made as to how long the coal would last. The definite conservation movement was led especially by Gifford Pinchot and President Roosevelt. In May, 1908, at the invitation of Mr. Roosevelt, a large body of distinguished men, including the members of the cabinet and of

the Supreme Court, members of Congress, the governors of thirty-four states and of the territories, representatives of many scientific societies, and others, gathered at the White House in a conference for the conservation of natural resources. Shortly afterward President Roosevelt appointed a national conservation commission, and since then conservation commissions have been created by practically all the states, besides unofficial organizations.

The conservation movement has for its object the conservation of all our natural resources in every way possible. In the case of the consumable resources which cannot be replaced, such as coal, gas, and oil, there should be reduction of waste in extraction and use; the metals, so far as possible, should be used over and over again; by scientific forestry the forests should be perpetually renewed as fast as used, losses by fire should be stopped, and denuded areas should be reforested; the water should be fully used for domestic purposes, power, irrigation, navigation, etc.; the soil should be protected from erosion, and its fertility maintained by proper methods of cultivation and by the use of fertilizers. These are some of the lines along which conservation is now being practised.

**295. Agricultural Development.**—Agriculture is the nation's most important industry. More people are engaged in farming than in any other occupation. In 1910, of about 38,000,000 persons engaged in gainful occupations, over 12,000,000 were engaged in farming and gardening. The total number employed in mining and in manufacturing and mechanical industries came next with about 11,500,000. The value of agricultural and animal products probably comes close to \$25,000,-000,000 a year. Notwithstanding the rush to the cities, it will be seen that a good many of us still make our living from the land.

As might be expected from the importance of the subject, the state and federal governments are doing a great deal to promote agriculture and the kindred industries. The United States Department of Agriculture co-operates with the state

agricultural departments in helping the farmer. The scope of the work of the Department of Agriculture may be seen from the names of its various bureaus devoted to this line of work. These are the Bureau of Animal Industry, the Bureau of Plant Industry, the Bureau of Chemistry, the Bureau of Soils, the



DEMONSTRATION OF STOCK ON AGRICULTURAL TRAIN  
SENT OUT BY A UNIVERSITY.

Bureau of Entomology, the Bureau of Crop Estimates, the Bureau of Markets, the Insecticide and Fungicide Board, and the federal Horticultural Board. The department issues many pamphlets and leaflets on almost every conceivable subject of interest to farmers, stock-raisers, fruit-growers, dairymen, and others engaged in rural pursuits. Experimental farms and stations are maintained by the state and federal governments, and many new varieties of agricultural and horticultural products are tested and developed. From these sources the farmer and his wife can get information

and advice about almost anything from spraying orchards to canning tomatoes.

Instruction in agriculture and kindred pursuits is given in state agricultural colleges and in the state universities. Demonstration trains are sent about the country carrying



DEMONSTRATION CLASS IN TRAIN SENT OUT BY UNIVERSITY.

instruction directly to the people. County demonstrators are employed in many counties. Boys' corn clubs and similar organizations are formed in many places to teach the young the best methods of farming. Altogether, the state and federal governments are doing a great amount of experimental and educational work to increase the amount of farm products and make rural life more attractive.

**296. Protection Against Plant Pests.**—An important special line of work which has only recently been taken up by the federal government is the protection of the United States from plant pests originating in foreign countries. For many years the principal European countries have protected themselves from such pests from this country. France, Germany, and

Holland, for example, have long refused to allow any living plants from America to enter those countries. The United States in the past has been as careless about admitting nursery stock from other countries as about admitting human immigrants. Until the enactment of the Plant Quarantine Act of



*Courtesy of the Scientific American.*

**PLANT IMMIGRANTS ARRIVING AT WASHINGTON, WHERE THEY  
UNDERGO EXAMINATION.**

1912, we had absolutely no protection from the importation of plant pests. All kinds of nursery stock was admitted without inspection.

This carelessness has cost us dear. Among the undesirables that have come in are: the *San José scale*, imported from China about forty years ago, and now costing the horticulturists of this country at least \$10,000,000 a year for spraying orchards and in the reduced value of fruit crops; the *citrus canker*, in-

troduced from Japan about 1908, which has been playing havoc with the citrus industry of Florida and other Gulf states; the *boll-weevil* of cotton which came to us from Egypt; the *chestnut blight*, which is destroying our chestnut-trees; and many other destructive insect and fungous pests. Several years ago the Department of Agriculture estimated that the annual crop losses due to these alien pests amounted to \$1,000,000,000 a year, and this at pre-war prices. Now we are being protected from such importations, and the government is spending large sums to help fight the pests that have already come in.

**297. Reclamation of Arid Lands.**—A large part of the area of the Western and Southwestern states is arid or semi-arid, the rainfall being insufficient to make agriculture successful without artificial irrigation. It has been estimated that the total area of land in the United States which should be irrigated is at least 750,000,000 acres, or more than one-third of the total area of the country. Much of this land is very rich and needs only the application of water to make it highly productive. The scarcity of water in these regions has led to water conservation and artificial irrigation from an early date. Under state laws irrigation has been practised in the arid region from the time of the early settlers. The greater part of the land originally belonged to the United States, and the federal government has recognized the use of water for artificial irrigation since the enactment of the first statute on the subject in 1866.

The most important federal statute is the Reclamation Act of 1902. Under this statute the Reclamation Service has been created. The government constructs irrigation systems on public lands and sells the reclaimed land in small tracts to settlers. Thus arid and worthless land is converted into productive farms. The government reimburses itself for the original outlay from the proceeds of the sales of the land, and thus the original fund can be used over and over. The value of the reclaimed land greatly exceeds the cost of the irrigation systems. According to a recent estimate 40,000 families were liv-

ing on lands already brought under irrigation, and the total value of the land was more than \$350,000,000. About thirty irrigation projects have already been undertaken by the Reclamation Service. The best known of the irrigation works are the Roosevelt Dam in Arizona, the Shoshone Dam in Montana, and the Elephant Butte Dam in New Mexico.

### Questions

1. Name the principal natural resources of the United States.
2. Mention some ways in which the fertility of the soil may be impaired. Can this be prevented?
3. What steps have been taken in recent years to stop the wasteful disposal of the land and other natural resources on the public domain?
4. Mention some ways in which the timber supply of the country is being wasted. Explain the connection between the forests and the water supply and the fertility of the soil. Can the forests be made to furnish a never-failing supply of timber?
5. Suggest some reasons why the coal and petroleum deposits should be controlled by the government.
6. Why has the extensive use of water power been begun only within the past quarter-century? Mention the principal uses to which electricity generated by water power may be put.
7. What is being done by the government to preserve and make available to the people the great natural and scenic wonders of this country?
8. What is the conservation movement, and how and when did it start?
9. Mention some of the things that are being done by the government to help those who make a living from the land.
10. Explain the plan by which arid land is being reclaimed by the federal Reclamation Service.

## CHAPTER XXX

### TERRITORIES AND DEPENDENCIES

**298. In General.**—At the time of the formation of the Union the boundaries of seven of the states were fixed about as at present, but the states of Massachusetts, Connecticut, Virginia, North and South Carolina, and Georgia extended, under their charters, somewhat indefinitely into the vast unoccupied regions lying toward the West. All this territory was claimed by these states, and some of it by New York also, and the claims of the respective states sometimes conflicted. A wise solution of the controversies growing out of these conflicting claims was found in the cession of the entire area to the United States.

The area of the United States at the time of the adoption of the Constitution extended westward to the Mississippi River, and on the south was cut off from the Gulf of Mexico by the Spanish territory, which stretched from the Atlantic Ocean to the Mississippi. Afterward, by various acquisitions by purchase, conquest, and exploration and settlement, the area of the United States was extended to its present boundaries. That part of the public domain lying north of the Ohio River and east of the Mississippi was known as the Northwest Territory, the government of which was provided for by the Continental Congress in the celebrated Ordinance of 1787. This ordinance, although prior to the Constitution, secured the blessings of liberty to the inhabitants of the territory, and constituted the basis of the territorial system of government under which the territories have been organized and governed prior to their admission as states.

As a rule the various acquisitions of territory by the United States have consisted of practically unoccupied areas, and so

long as these remained without sufficient population to justify the establishment of local governments, they were governed directly by Congress. But with the increase of population through immigration, organized territories have been created by act of Congress with governments modelled after those of the states, the territorial governments so established being subject to the control of Congress. It was expected that these territories should be admitted into the Union as soon as their population became sufficient to warrant it. These territories were all a part of the continental area of the United States, and have now all been admitted into the Union upon equal terms with the original states. At present the only territories are Alaska and Hawaii.

According to Chief Justice Marshall: "The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently that government possesses the power of acquiring territory, either by conquest or by treaty." The power of Congress to govern the territories is conferred by the provision of the Constitution that: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." The power to govern the territories also exists independently of this provision. In the words of Marshall: "Perhaps the power of governing a territory belonging to the United States which has not by becoming a state acquired the means of self-government may result necessarily from the facts that it is not within the jurisdiction of any particular state and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned."

**299. The Constitution and Territories and Dependencies.—** The Constitution was made for states and not for territories or colonial possessions. When these were acquired the question arose as to how far the constitutional provisions

applied to them. It was finally decided that the constitutional guaranties respecting life, liberty, and property, for example, the guaranty of a jury trial in civil and criminal cases, apply to the *organized* territories of the United States, including Alaska, and the District of Columbia, but that as to foreign territory acquired by the United States which has not been incorporated into the United States so as to become a part of it, these constitutional guaranties do not apply, unless Congress expressly so provides.

This doctrine that the Constitution does not "follow the flag" did not receive the unanimous consent of the Supreme Court. So far as the Supreme Court has established any doctrine on the subject, it seems that, while Congress probably may not lawfully disregard the fundamental natural rights of individuals in the government of the unincorporated possessions of the United States, such as the rights to religious liberty, property, free access to the courts, due process of law, etc., the Constitution does not guaranty to the inhabitants of such possessions the artificial rights of citizenship and the particular modes of procedure secured in the Constitution which are peculiar to Anglo-Saxon jurisprudence. Trial by jury, for example, would be inappropriate for peoples who are unfamiliar with its workings.

**300. Alaska.**—Alaska, formerly called Russian America, was purchased by the United States from Russia in 1867 for \$7,200,000. It forms the extreme northwestern portion of the North American continent, and has an area of 590,884 square miles, which exceeds that of the original thirteen states. It is rich in mineral resources and the returns from the sealskin and fishing industries alone have greatly exceeded the purchase price. The population in 1920 was 54,899.

The present territorial government was established by act of Congress of August 24, 1912. It is substantially the same as that of a state, except that it is subject to the control of Congress. There is a legislature, consisting of a senate and a house of representatives, elected by the people of the territory; a

governor appointed by the President and Senate for a term of four years; and a system of courts. It is provided that: "The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said territory as elsewhere in the United States." The territory is allowed one delegate to the House of Representatives, elected by the people of the territory every two years. The delegate is entitled to a seat in the House and may take part in the debates and serve on committees, but has no vote.

301. **Hawaii.**—The Sandwich or Hawaiian Islands are a small group of islands situated in the middle of the Pacific Ocean. They were discovered by a Spanish navigator in 1542 and visited by the English navigator Captain Cook in 1778. At the time of Cook's visit the population was estimated at 300,000, but soon afterward this number was greatly reduced by war and disease. The islands are twelve in number, of which eight are inhabited and the others barren rocks. The total area is 6,449 square miles. Under the natives a kingdom was established, but in 1893 the queen, Liliuokalani, was deposed and a republic set up. In 1898, by joint resolution of Congress, the republic was annexed to the United States, as the "republic of Hawaii," and by act of Congress of June 14, 1900, was formally incorporated into the United States as the "territory of Hawaii."

The territorial government established by Congress is similar to that of Alaska. Hawaii is also allowed a delegate in the House of Representatives. By act of Congress, citizens of Hawaii are made citizens of the United States, and it is provided that: "The Constitution, and, except as otherwise provided, all the laws of the United States, including laws carrying general appropriations, which are not locally inapplicable, shall have the same force and effect within the said territory as elsewhere in the United States."

The population of the territory in 1920 was about 256,000, of whom only about 24,000 were native Hawaiians. The Japa-

nese numbered about 110,000. The immigration of Japanese, Chinese, and Koreans is now prohibited under the general immigration laws of the United States.

**302. The Philippine Islands.**—The Philippine Islands are an important archipelago in the Pacific Ocean, consisting of about 3,200 islands and islets with a total area of about 128,000 square miles. The population in 1920 was 10,350,000. The natives comprise many different tribes of varying degrees of civilization, and speaking many dialects. The islands were discovered by the Portuguese navigator Magellan in 1521. They were taken possession of by Spain and held as a Spanish colony until 1898, when they were ceded by Spain to the United States at the close of the Spanish-American War. The islands were under military government until 1901, when a civil government was established by the United States with William H. Taft as governor. Under an act of 1902 the first legislative assembly was elected in the islands in 1907. The present government was established by an act of Congress passed in 1916.

The government of the Philippine Islands has been one of the most difficult tasks ever undertaken by the United States. The inhabitants were a foreign and undeveloped people, speaking many languages, many of them savages, and almost all of them wholly unacquainted with Anglo-Saxon institutions. They had practically no conception of the first principles of self-government, and were entirely unfit to govern themselves. The problem of providing a government for these people was thrust unexpectedly upon the United States by the accident of war. At first there was complaint on the part of some Americans that it is not in harmony with American institutions for the United States to govern an alien and dependent people or to maintain a colonial system, and the cry of imperialism was raised. The undesirability from the American point of view of the possession of the Philippines has been generally recognized, but it has also been seen that it would be improper, if not dangerous, to leave them to shift for themselves before they are prepared for self-government. The policy of the gov-

ernment from the beginning has been to prepare the inhabitants for self-government as rapidly as possible with a view to their ultimate independence. To this end the United States Government has been establishing schools, building roads, and making other internal improvements, and by degrees admitting the natives into the local government.

The act of 1916 grants to the Philippines a large measure of self-government. The legislature consists of a senate and a house of representatives, both elected by the inhabitants of the islands. It has general legislative power, except as otherwise provided, but subject to a bill of rights containing guarantees such as are found in the Constitution of the United States, trial by jury, however, not being included. The head of the executive department is the governor-general, who is appointed by the President and Senate, and holds his office at the pleasure of the President and until his successor is chosen and qualified. The principal courts are the Supreme Court and twenty-six "courts of first instance." The judges of the Supreme Court are appointed by the President and Senate, and those of the courts of first instance by the governor-general and the Philippine senate. Appeals may be taken in certain cases from the Philippine Supreme Court to the Supreme Court of the United States. Two resident commissioners to the United States are elected every three years by the Philippine legislature. Unlike the territorial delegates, the resident commissioners have no seats in the House of Representatives, but by courtesy of the House are allowed the privilege of debate.

The Philippine Islands are not a part of the United States and the citizens of the islands are not citizens of the United States. The government of the Philippine Islands is authorized by Congress to establish a mint at Manila, and to coin money, and the islands have a separate monetary system.

303. **Porto Rico.**—The island of Porto Rico was discovered by Columbus in 1493, and soon became a Spanish possession. At the close of the Spanish-American War in 1898 it was ceded to the United States. The area of the island is 3,606 square miles, or, with several small adjacent islands also included in

the cession, 3,790 square miles. The population in 1920 was 1,299,809.

The civil government of Porto Rico under American control was established by acts of Congress of 1900 and 1917. By the act of 1917 United States citizenship was extended to the inhabitants of the island. The governor is appointed by the President and Senate and holds office at the pleasure of the President and until his successor is chosen and qualified. The legislature consists of a senate and a house of representatives, elected by the people. The judges of the Supreme Court of Porto Rico and of the United States District Court for the island are appointed by the President and Senate. There are also inferior courts. A bill of rights similar to that enacted for the Philippine Islands is in force. A resident commissioner to the United States is elected for a term of four years. He is by courtesy allowed the privilege of debate in the House of Representatives, but has no seat in that body.

Porto Rico is not a part of the United States within the meaning of the provision of the Constitution that all duties, imposts, and excises shall be uniform throughout the United States, nor is it a foreign country so as to make goods brought into Porto Rico from the United States subject to duty as imports. The United States coinage and postage stamps are used in the island.

**304. Panama Canal Zone.**—The idea of constructing a canal across the narrow neck of land connecting the continents of North and South America long appealed to human imagination, and it is stated that such a canal was proposed as early as 1528. Various surveys were made during the middle period of the nineteenth century. In 1846 the United States by treaty with New Granada, now Colombia, acquired a right of way across the Isthmus of Panama, and in 1850 the United States and Great Britain entered into the Clayton-Bulwer treaty with reference to the construction of a trans-isthmian canal, which was later the subject of much discussion. For various reasons the canal project lay dormant for many years. In 1878 Colombia granted a right of way through Panama to a French

company headed by Ferdinand de Lesseps, the famous builder of the Suez Canal. The prospect of the construction of the canal by a foreign company aroused this country, and in a special message to Congress, President Hayes in 1880 declared that any canal connecting the two oceans would be "virtually a part of the coast-line of the United States," and must be under American control. Unsuccessful efforts were made to secure a modification of the Clayton-Bulwer treaty so as to make it more favorable to the United States. Meanwhile, the French company proceeded with the construction of the canal, but, after the expenditure of a vast amount of money and the sacrifice of thousands of lives through disease, the project ended in total failure.

In 1901 a new treaty, the Hay-Pauncefote treaty, was negotiated with Great Britain, abrogating the Clayton-Bulwer treaty, and providing for the construction of a canal by the United States. A commission of American engineers reported in favor of a route through Nicaragua, and there was some prospect that this route would be adopted. In January, 1902, the French company offered its entire interests to the United States for \$40,000,000. A treaty was signed with the Colombian representative at Washington by which the United States agreed to pay Colombia \$10,000,000 in cash and an annuity of \$250,000 for a lease of a strip of land six miles wide across the isthmus, Panama being a state of Colombia. This treaty was unanimously rejected by the Colombian senate, August 12, 1903. In November, 1903, a revolution took place in Panama, which declared itself independent. The revolutionists were supported by United States marines acting under orders from President Roosevelt. The republic of Panama was immediately recognized by the United States Government, which at once secured from the Panama Government the lease of a strip ten miles wide, known as the Canal Zone, for \$10,000,000 and an annual sum of \$250,000. The French company's offer was accepted and its properties were acquired in 1904 for \$40,000,000. The Panama transaction resulted in strained relations between Colombia and the United States, and in 1921

the sum of \$25,000,000 was paid by the United States to Colombia in satisfaction of its demands.

The construction of the canal as a feat of engineering has excited the admiration of the world. The total cost was \$325,-201,000, exclusive of the \$50,000,000 paid to the French company and to Panama, and also of the expenditures for its defense. The canal was opened to navigation August 15, 1914. Scarcely less remarkable than the construction of the canal was the sanitation work of the Americans by which the isthmus was transformed from a plague spot into one of the healthiest places in the world. The Panama Canal and Zone are governed by a governor appointed by the President and Senate for a term of four years, together with such other persons as the President may appoint. The government is, therefore, under the personal direction of the President.

305. **Cuba.**—On April 20, 1898, Congress passed a joint resolution in which, after a preamble reciting the "abhorrent conditions" that had existed in Cuba for three years, culminating in the destruction of a United States battleship (*the Maine*) with 266 of its officers and crew in the harbor of Havana, declared the freedom and independence of the people of Cuba, demanded that Spain at once relinquish its authority and government in the island and withdraw its land and naval forces therefrom, directed and empowered the President to use the entire land and naval forces of the United States, and the militia so far as necessary, to carry these resolutions into effect, and finally declared: "That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people." This joint resolution was followed on April 25, 1898, by a declaration that a state of war had existed since April 21, 1898, between the United States and Spain.

The war was soon over. Spain relinquished all claim of sovereignty over and title to Cuba and on January 1, 1899, turned over the control of the island to General John H. Brooke, of the

United States army, who had been appointed by the President as military governor of Cuba. Under the military government the island was pacified, order restored, schools established, public works constructed, and Havana and other cities put in sanitary condition. Through the discovery by Major Walter Reed, an army surgeon, that yellow fever is transmitted by the bite of a mosquito, the remedy for this terrible scourge was found, and Havana was freed therefrom.

In February, 1901, General Leonard Wood, then military governor, called a constitutional convention which adopted a constitution for the island, which did not, however, define the future relations of Cuba and the United States. A provision covering this point was then added to the army appropriation bill of March 2, 1901, known as the Platt Amendment, the terms of which were added to the Cuban constitution and embodied in a treaty with the United States. Their effect is to establish a United States protectorate over the island.

Cuba's first president, Tomas Estrada Palma, was inaugurated on May 20, 1902, and the government of the island was turned over to him, and the American army of occupation was withdrawn. Soon after his re-election in 1906 an insurrection broke out having for its object the overthrow of the government, this indicating that the people were not yet ready for self-government. The United States again assumed military control of the island, which was continued for about two years, the army being withdrawn and the government again turned over to the Cubans in January, 1909. Since then the Cubans have governed the island.

**306. Minor Insular Possessions.**—The small island of Guam in the Pacific Ocean was acquired from Spain in 1898. Its area is 225 square miles, and its population 15,000. It is on the line of travel between the United States and the Philippine Islands, and is a station on the cable line from San Francisco to Manila, and is also an important coaling station. It is governed by a United States naval officer, subject to laws passed by Congress. By treaty with Great Britain and Germany the

United States in 1899 acquired the small islands of Tutuila and Manua in the Samoan group. These also are governed by a naval officer.

In 1917 the United States, by treaty, purchased from Denmark for \$25,000,000 the Danish West Indies, consisting of the islands of St. Croix, St. Thomas, and St. John, lying immediately to the east of Porto Rico. By act of March 3, 1917, the government of the islands was vested in a governor and such person or persons as the President may appoint, to be exercised in such manner as the President shall direct until Congress shall provide for the government of the islands. The population of these islands in 1917 was 26,051.

Several small scattered islands in the Pacific, namely, Midway, Howland, Baker, and Wake Islands, are claimed by the United States, and also certain islands known as the Guano Islands. It is provided by act of Congress that: "Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States." The uninhabited islands, of course, need no organized government. Some of the small islands in the Pacific are valuable as stations for the trans-Pacific cables, and possibly as bases for naval operations.

### Questions

1. What provisions of the Constitution give Congress power to acquire and govern new territory? Do the guaranties in the Constitution apply to the inhabitants of territory acquired from other countries?
2. Describe the government of Alaska; Hawaii; the Philippine Islands; Porto Rico. Are the inhabitants of these places citizens of the United States?
3. What is the relation of the United States to Cuba? Are the people of Cuba a sovereign nation?
4. Why are the Danish West Indies important to the United States? Also Guam and other small islands in the Pacific?

## CHAPTER XXXI

### NATIONAL DEFENSE

#### 307. Advantageous Defensive Position of the United States.

—The problem of national defense is probably a simpler one for the United States than for any other great country. The geographical position of the country is such as to make the danger of attack by a foreign power almost negligible, provided the people of this country remain united and make reasonable provision for defense.\*

It may be doubted whether the improvement in the means of transportation has greatly lessened the effectiveness of the ocean as a natural defense. Even with modern steamships the transportation of an army across the ocean is a matter of weeks, and if the steamship has shortened the trip across the sea, the railroad has made possible the quicker concentration of troops to meet invading forces. At the same time the telegraph, wireless, and airplane have made a surprise attack almost impossible, and the submarine and heavy coast artillery have immensely increased the difficulty of transporting and landing troops. Our isolation gives us security and the definiteness of our boundaries lessens the chance of trouble with other nations, for one of the most common causes of friction between nations is the want of fixed and certain international boundaries.

Finally, not only is this country protected by its situation from attack, but it contains within itself almost everything in the way of natural resources needed for the comfortable

\* By agreement between Great Britain and the United States, the international boundary-line between this country and Canada is unfortified. Yet for more than one hundred years there has been peace between the two nations. This three thousand miles of undefended frontier between two peace-loving peoples is a most impressive argument for disarmament. Would there have been peace with a fort every few miles and war-ships on the Lakes?

support of its people. A blockade of England would bring that country to terms in a few months or weeks, but the United States could never be starved into submission. Our wealth of natural resources and territory leave us no motive for declaring a war of conquest upon any other nation, and our position and resources make conquest by another power almost out of the question. The people of the United States have nothing to fear from other nations so long as they remain united, attend to their own business, and are true to their present ideals of international justice.

**308. Constitutional Provisions for National Defense.**—The military and naval defense of the United States is intrusted exclusively to the federal government, the states being expressly prohibited by the Constitution from keeping troops or ships of war or engaging in war, "unless actually invaded or in such imminent danger as will not admit of delay." About one-third of the legislative powers expressly granted to Congress in the Constitution relate to the making of war or the maintenance of order by military force. These powers include the declaring of war, raising and supporting armies, providing and maintaining a navy, organizing, arming, and disciplining the militia, and, in general, doing whatever is usual in providing for and carrying on war.

The war powers of Congress, like all of its powers, are derived solely from the Constitution. Great as these powers are, they are not without constitutional limitations. Sometimes a notion seems to get out that the Constitution is fully operative only in times of peace, and that constitutional restraints do not operate in war times, but that then Congress has practically unlimited power. This is not true. In war as in peace the government of the United States can exist and function only under the Constitution. The Constitution is in no respect suspended by the existence of war, but every one of its guaranties remains unimpaired.

The express constitutional restrictions upon the war powers are few, and are limited to some minor particulars, such as

the limitation of appropriations for the support of the army to two years, and the provision of the Third Amendment relating to quartering of troops in private houses. The only general limitations upon the exercise of the war powers are those imposed by international law. In time of war the government may lawfully do whatever is recognized by international law as permissible in order to prosecute the war with success. The ordinary life of the people may be regulated by Congress and the President as Commander-in-Chief of the army to an extent far beyond what would be constitutional in time of peace. This was exemplified on a large scale during the war with Germany, the federal government assuming control of the resources of the country to a great extent in order to win the war.

**309. The Power to Declare War.**—No more serious question can be presented to the people of a country than the question whether they shall engage in war. Throughout the course of history the people have generally had little or no voice in the determination of this question. Wars have generally been waged at the will of the rulers, the people usually having no choice but to give their lives and fortunes to the service of their sovereign. The framers of the Constitution have made this condition impossible in the United States. The power to declare war is vested in Congress, composed of representatives of the people, more than four-fifths of whom are elected every two years, so that the body is keenly sensitive to the will of the electors. It is almost a political impossibility for the government to declare war against the wishes of the people. Few provisions of the Constitution show more wisdom than this; the branch of the government most responsible to the people has the sole power of declaring war. The President may so deal with foreign nations as to bring on war, but he has himself no power to declare war.\*

\* A declaration of war is a formal notice by one nation to another that it is about to wage war against that other. Such notices, while customary, are not always given, and war has been begun without notice. Congress

**310. The National Forces.**—The national forces consist of the army, the navy, the marines, the militia when called into the service of the United States, and the professors and cadets of the United States Military and Naval Academies. It is a well-settled principle of public law that every citizen of a country, capable of bearing arms and supporting the fatigues of war, is bound to render military service to his country when called upon to do so. This principle is embodied in an act of Congress which provides that: "All able-bodied citizens of the United States, and persons of foreign birth who shall have declared their intention to become citizens of the United States under and in pursuance of the laws thereof, between the ages of eighteen and forty-five years, are hereby declared to constitute the national forces, and, with such exceptions and under such conditions as may be prescribed by law, shall be liable to perform military duty in the service of the United States." The military duty here referred to includes duty at sea as well as on land, and in foreign lands as well as within the territory of the United States.

In times of peace the national forces are easily recruited to the required strength by voluntary enlistments. But every citizen may be called upon to serve unless exempted for good cause. Conscription laws are common means of raising armies, and in some foreign countries it has been the practice to require every able-bodied man to render military service even in time of peace. While there has of late been some sentiment in this country in favor of universal compulsory military training, nothing of the sort has ever been tried. But conscription has been employed during war. In 1814 a conscription bill was introduced in Congress during the war with Great Britain, but peace was declared before the bill was enacted. During the Civil War both sides employed conscription. The federal

declared war in 1812 against Great Britain, and in 1846 declared that a state of war existed with Mexico. The latter form of declaration was also employed against Spain in 1898, and against Germany and Austria in 1917. In the case of the Civil War there was no formal declaration by either side.

act was defective in some important respects and was very unpopular. In July, 1863, immediately after the battle of Gettysburg, it caused serious riots in New York City in which about 1,000 persons were killed. There were disturbances also in some other parts of the country. In 1917, soon after the United States entered the World War, Congress passed the Selective Draft Act, under which and its amendments the army and navy were mainly recruited. On the first registration day, June 5, 1917, nearly 10,000,000 men between the ages of twenty-one and thirty years were registered in the United States. The act was in the main fair and was a great success. It was held constitutional by the Supreme Court.

The government of the military establishment of the United States is entirely under the control of Congress, which is given power "to make rules for the government and regulation of the land and naval forces." Congress has passed a number of laws on the subject. There are numerous regulations for the government of the several branches of the service. Congress exercises its war powers in conjunction with the President, who, by the Constitution, is made Commander-in-Chief of the army and navy. Should he see fit to do so, the President has power to take actual command of the forces, but no President has ever done this. No professional soldier has been President in time of war, and, besides, the civil duties of the President give him all he can do.

**311. The Army.**—Congress is given power "to raise and support armies; but no appropriation of money to that use shall be for a longer term than two years." The limitation of appropriations is a reflection of the popular dread of standing armies at the time the Constitution was framed. It was known that a standing army cannot become a menace to liberty without support, and the surest way to hold it in check is to withhold the "sinews of war." Congress has to make a new appropriation for the army every two years, and this gives it a chance to look into the military situation. Congress itself is elected every two years and thus the people can hold military

appropriations in check. As a matter of custom army appropriations are made annually.

The favorable geographical situation of the United States has made a large standing army unnecessary. For a long time after the Civil War the regular army consisted of only 25,000 men. By the act of 1916 the number was fixed at 175,000, but in 1921 it was reduced to 150,000. The organization of the army is quite elaborate. At the top is the General Staff Corps, organized under the act of 1903 and its amendments. This is composed of officers detailed from the army under such rules as may be prescribed by the president. Members of the staff serve for four years unless sooner relieved. The Chief of Staff is a general of the line and takes precedence over all other officers of the army. The principal duties of the staff are to prepare plans for national defense and to look after military matters generally.

**312. The Navy.**—As in the case of Great Britain, the "first line of defense" of the United States is its navy. So long as we have a strong navy there is little danger of invasion by a foreign army and our own army need not be large. With our extended seacoast, and especially with our insular possessions, a powerful navy is a necessity until the great nations agree to restrict armaments. Congress is given power "to provide and maintain a navy," without limitation, as in the case of the army, as to appropriations. Our forefathers did not dread a navy. It could not, like the army, become an instrument of oppression.

The cost of a navy is staggering and only a wealthy nation can afford to own even a small navy of modern fighting ships. No national problem of the times is more urgently demanding attention than the problem of disarmament. To say nothing of the fact that ships cost so much, there is no agreement among experts as to what kinds of ships should be built. Some claim that the airplane has rendered the battleship obsolete, and others insist that our main reliance should be on bigger and bigger battleships. The answer is the limitation of arma-

ments by international agreement. In this a beginning was made by the Conference at Washington called by President Harding in 1921.

The marine corps is a body of troops normally attached to the navy for service on board men-of-war or at naval stations. They are organized as soldiers and their officers are graded with army ranks. They are the fighting men, as distinguished from the crew, aboard ships of war. When detached for regular land service they constitute a part of the army.

313. **The Militia.**—The militia is a body of men taken from civil life and organized, equipped, and drilled as a military force, but not called into actual service except for practice or in case of emergency to maintain order. They constitute a citizen-soldiery. The states are prohibited by the Constitution from keeping troops in time of peace without the consent of Congress, but all the states maintain an organization of militia. Until the militia is actually called into the service of the United States, it belongs to the state and is organized and governed under state authority, subject to the paramount power of Congress to legislate on the subject. The governor of the state is commander-in-chief of the state militia, and has authority to call it out in case of need to maintain order in the state. The militia is often called out to suppress disorder, as in times of strikes, threatened lynchings, conflagrations, and the like. Whenever local authorities feel unable to maintain order, they may call upon the governor to send companies of militia to their assistance.

The Constitution grants to Congress the power "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions: to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress." Congress has passed several laws under this authority. Since the

militia may be called out by the federal government only "to execute the laws of the Union, suppress insurrections, and repel invasion," it seems that it may be so called out only for service within the boundaries of the United States, for the occasion for such call can arise only therein. But this limitation does not apply to the services of the regular army. It may be sent anywhere. The power of Congress to raise and support armies is an entirely distinct power from the power to provide for calling forth the militia, though, of course, it may operate on the same individuals. The militia has been called into the national service several times, as in 1794 to suppress the whiskey insurrection in Pennsylvania, during the war of 1812 to repel invasion, and during the Civil War.

The importance of the militia is recognized in the Second Amendment, providing that: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

### Questions

1. State the natural advantages by which the United States is rendered almost unconquerable by a foreign enemy. What effect, if any, has the invention of steam transportation and the telegraph had upon the effectiveness of the ocean as a natural defense to this country?
2. Enumerate the war powers of Congress under the Constitution.
3. By whom is war declared? Do you think it would be wise to give the President power to declare war? It has been proposed to amend the Constitution so as to require an affirmative vote by the people before war shall be declared. Would this be wise?
4. Who are liable to military service in this country? May Congress compel citizens to serve in the army and navy? Are women subject to such conscription?
5. What is the President's position in respect to the national forces? Has he constitutional power to command troops?
6. Name the several branches of the national forces of the United States. What is the militia? May the militia be made to serve in other states than their home state? May they be used in foreign service?

## CHAPTER XXXII

### FOREIGN RELATIONS OF THE UNITED STATES

**314. Federal Control of Foreign Relations.**—The foreign relations of the United States are exclusively in the control of the federal government. So far as foreign nations are concerned the United States is a unit and the several states are politically non-existent. In dealing with foreign governments the United States is represented in diplomatic matters by the President, or by the President and Senate, as in the appointment and reception of diplomatic officers and in making treaties; while in some matters, as in declaring war, Congress acts as a whole. The states are expressly prohibited from entering into treaties with foreign nations. The foreign service of the United States consists of two branches: the diplomatic service and the consular service. Both are carried on by representatives of the United States in foreign countries, and foreign governments maintain similar representatives in this country.

**315. International Law.**—In its relations with other nations the United States is governed by the principles of international law, which is the general body of rules which govern civilized nations in their dealings with each other. International law is not law in the same sense as the law of any particular nation, for it is not made or enacted or enforced by any particular body or authority, that is, it has no definite *sanc*tion**. Its sources are: (1) treaties between nations; (2) the decisions of international tribunals so far as these have been established, for example, the Hague Tribunal and the various commissions that have been appointed for settling international disputes; (3) the decisions of national courts, such as the Supreme Court of the United States or the judicial branch of the British House of Lords, especially in cases involving captures at sea; (4) the state papers and diplomatic correspondence of the various na-

tions; (5) the instructions issued by the executive departments of the various governments; (6) the writings of publicists of international reputation, such as Hugo Grotius, the great Dutch jurist, whose book "On the Law of War and Peace" (*De Jure Belli et Pacis*), published in 1625, laid the foundations of modern international law; also, (7) the practices of the nations in dealing with each other in peace and war. As in England and in this country a *common law* has developed from custom, so there is an international common law. The law of war, for example, has grown mainly out of the practices of civilized nations in carrying on war. In so far as these practices are approved by the nations generally, they are incorporated into international law.

International law is not enforced by any super-government or power, but each nation maintains its rights under it as best it can, resorting to war or the threat of war when necessary. In recent years world public opinion has developed into a powerful force in support of international law. No nation can afford to bring upon itself the contempt of the world by disregarding those principles which world opinion holds as properly binding in international relations. Even Germany felt called upon to justify herself before the world for her flagrant outrages during the World War by offering various excuses or denials in her own defense.

**316. The United States and World Politics.**—Notwithstanding the geographical isolation of this country, the United States has never pursued a policy of isolation in respect to foreign affairs. Probably no other nation in modern times, except Great Britain, has exerted so much influence on world politics. To a great extent the political influence of the United States has been by example; only occasionally has it taken a hand directly in the affairs of other nations. The people of the United States established the first real democracy known to history, with a government professedly deriving all its just powers from the consent of the governed, and dedicated to the proposition that all men are created equal and endowed

by the Creator with the unalienable right to life, liberty, and the pursuit of happiness. The success of this novel experiment in government has inspired the peoples of other nations throughout the world wherever ideals of liberty are cherished. Wherever autocracy has been overthrown and democracy attempted, the example of the United States has been an inspiration and its experience a guide.

But the influence of the United States in world affairs has not been by example only. The American people, who by birth or ancestry are themselves of foreign origin, have always taken an interest in the people of other countries. No other nation has been so ready to respond to any call of need throughout the world. Sufferers by famine, oppression, or disaster have never appealed in vain to the people of this country for help. The people of Ireland, Russia, China, Armenia, and other countries have received money or supplies at various times. Through the American Red Cross and other agencies immense sums of money were raised in this country for the relief of the war sufferers of Europe during the World War, even before the United States entered the war. The government itself has sometimes sent relief, as when Congress in 1909 appropriated \$800,000 for the relief of the sufferers from the earthquake in Sicily, and in 1922 appropriated \$20,000,000 for the starving Russians.

Also in direct dealings the United States from the beginning has played its full part in international affairs. It has entered into many treaties with foreign governments. In 1778 Congress made a general commercial treaty with France, and also a treaty of alliance in which France agreed to aid the United States in the Revolutionary War and the United States guaranteed to France her West Indian possessions. This, however, is the only treaty of alliance ever signed by the United States. Upon the outbreak of war in 1793 between Great Britain and France, President Washington issued a proclamation of neutrality which laid the foundation for the modern standard of conduct of neutrals during war, and the United States fought

the War of 1812 as the foremost champion of the rights of neutrals. In 1801–1804 and in 1812 the United States, in defense of American commerce, defeated the Barbary powers in the Mediterranean and stopped the levying of tribute. By its assertion of the Monroe Doctrine the United States contributed to the establishment of the republics of South and Central America without interference by European powers. By the expedition of Commodore Matthew C. Perry to Japan in 1853 the United States induced that nation to open its ports to American commerce, and thus in the end to the commerce of the world. Nearly half a century later the United States Government took a firm stand for the territorial integrity of China and the maintenance of the “open door” policy for international trade with that country. In 1898 the United States went to war with Spain in the interest of the independence of Cuba.

The United States has often taken part in international councils and assemblies. In 1884 it sent a representative to the Congo conference at Berlin to determine the status of the Congo, and in 1906 the United States, by invitation, was represented at the conference at Algeciras in Spain for the settlement of the conflicting claims of France and Germany in Morocco. The United States also took a prominent part in the Hague Conferences of 1899 and 1907, and has participated in various conferences with representatives of the Latin-American republics. In 1921–1922 the Conference for the Limitation of Armaments, called by President Harding, was held at Washington.

The above are but important instances of participation by the United States in international affairs. Others could be cited to show still further that this country has never maintained a position of international isolation. Throughout its history, however, it has avoided *permanent political alliances* with foreign powers, against which this nation was warned by Washington in his Farewell Address as set forth in the next section.

317. **Washington's Advice.**—In his Farewell Address to the people of the United States, delivered upon his retirement from the presidency in 1797, Washington said:

Observe good faith and justice toward all nations; cultivate peace and harmony with all. . . . The great rule of conduct for us in regard to foreign nations, is, in extending our commercial relations, to have with them as little *political* connection as possible. . . . Europe has a set of primary interests which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise for us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or in the ordinary combinations and collisions of her friendships. Our detached and distant situation invites and enables us to pursue a different course. . . . Why forego the advantages of so peculiar a situation? Why quit our own to stand on foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice? It is our true policy to steer clear of permanent alliances with any portion of the foreign world. . . . Taking care always to keep ourselves, by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

President Jefferson, in his first inaugural address, in 1801, expressed more briefly the same opinion. In enumerating what he deemed to be the "essential principles of our government," he mentioned first: "Equal and exact justice to all men, of whatever state and persuasion, religious or political; peace, commerce, and honest friendship with all nations—entangling alliances with none." The government of the United States has always adhered to the policy laid down by Washington and reaffirmed by Jefferson. It will be seen that it was "permanent alliances," and not "temporary alliances for extraordinary emergencies," that Washington warned his countrymen against. Only permanent political alliances are in danger of becoming the "entangling alliances," to use Jefferson's phrase, which Washington had in mind.

**318. The Monroe Doctrine.**—The first great foreign policy of the United States, which has just been explained, is, in substance, that the United States will not interfere in the affairs of European nations; the second great foreign policy, known as the Monroe Doctrine, is that European nations shall not interfere in American affairs. The Monroe Doctrine was announced by President Monroe in 1823 in response to a movement of certain European nations to assert claims to sovereignty in this hemisphere. During the period from 1810 to 1823 most of the South American colonies of Spain had revolted and won their independence, and their new governments had been recognized by the United States. Their independence was not recognized, however, by the European powers. Also Russia claimed the northwest coast of North America, this claim being disputed by both England and the United States. Upon the overthrow of Napoleon in 1815, the sovereigns of Russia, Austria, and Prussia entered into the so-called Holy Alliance, which was afterward joined by other European powers, including France, but not Great Britain.

In 1823 this alliance took under consideration the question of aiding Spain to recover her lost American colonies. Upon learning of this plan, the British foreign secretary, George Canning, proposed to the United States minister at London that the United States and Great Britain unite in a protest against European interference in American affairs, this being practically the proposal of an alliance between the two countries. After carefully considering this proposal, the United States Government finally decided upon an independent declaration on the subject by the United States. President Monroe accordingly embodied such a declaration in his message to Congress of December 2, 1823, thus first announcing what has since been known as the Monroe Doctrine. The passages containing this doctrine are as follows:

The occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition

which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers. . . . In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments; and to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States.

President Monroe's declaration may be summed up in four propositions, as follows:

1. That no part of America shall be subject to future colonization by any European power.
2. That it does not comport with the policy of the United States to take any part in the wars of the European powers in matters relating to themselves, and only when the rights of this country are invaded or seriously menaced will this nation make preparation for its own defense.
3. That any attempt on the part of European nations to extend their system of government to any portion of this hemisphere will be regarded as dangerous to the peace and safety of the United States.

4. That any interposition of any European power for the purpose of oppressing or controlling in any other manner the destiny of the other independent American countries will be viewed as the manifestation of an unfriendly disposition toward the United States.

It will be seen that the second proposition is a reaffirmation of the policy laid down by Washington. The other three propositions constitute the Monroe Doctrine proper. This doctrine is a policy of the United States alone, and does not constitute a contract or understanding with any other nation or nations, though it was approved by Great Britain and is thoroughly understood by other powers as a policy that must be taken into account. It has been asserted and maintained by the United States upon its sole responsibility and with reference to the interests, and especially the safety, of the United States alone. It is a policy of self-defense. The re-establishment in this hemisphere of a strong European power might become dangerous to the United States. The doctrine was not intended for the benefit of other American countries. Nevertheless, it worked greatly to their advantage. There can be little doubt that but for this declared policy, some of the South and Central American countries would long since have been taken possession of by foreign powers. The Monroe Doctrine is a doctrine of the executive department of the government, rather than of Congress, and its application may vary with different Presidents.

**319. Applications of the Monroe Doctrine.**—The United States has always adhered to the Monroe Doctrine and foreign governments have acquiesced in it. It has been applied in many cases. Thus in 1866 the French withdrew from Mexico in response to the insistence of the United States Government under the Monroe Doctrine. In 1895, in his famous Venezuela message, President Cleveland insisted upon the arbitration of the dispute between Venezuela and Great Britain as to the true boundary between Venezuela and British Guiana, and carried his point.

In 1903 Great Britain, Germany, and Italy had united in a blockade of the Venezuelan coast in order to force the government of that country to pay certain debts it owed to their respective citizens, the claims being in dispute. Great Britain and Italy, through the mediation of the United States, agreed to arbitrate, but Germany refused. President Roosevelt then threatened to send a United States naval force to prevent action by the German navy, whereupon Germany yielded. This experience led to an extension of the principle of the Monroe Doctrine. In thus keeping foreign powers out of American affairs the United States almost necessarily becomes to some extent a guarantor that the other American republics will discharge their just obligations to foreign nations. In 1904 President Roosevelt, in his message to Congress, said: "Any country whose people conduct themselves well can count on our hearty friendship. If a nation shows that it knows how to act with reasonable decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrong-doing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western hemisphere, the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrong-doing or impotence to the exercise of an international police power."

This so-called "Big Stick" policy has been resented in Latin-American countries, which have been more disposed to complain of a possible United States protectorate as a logical incident to the Monroe Doctrine than to acknowledge how much they owe to the protection of the doctrine itself. In recent years, in application of the principle announced by Mr. Roosevelt, the United States has assumed authority in San Domingo and Hayti. Taking into account its own possessions, its protectorate over Cuba, and the necessity of occasional interference in the turbulent little states, to say nothing of Mexico, the United States may be said to have had a large influence upon

the foreign relations of the nominal republics encircling the Caribbean Sea.

**320. The Hague Conferences and Court.**—In 1899, in response to an invitation from Nicholas II, Czar of Russia, representatives of the leading nations, including the United States, met at The Hague, in Holland, in an “International Peace Conference,” having for its object the consideration of the problem of universal peace, especially with reference to the reduction of armaments and the prevention of war by diplomacy. The conference adopted three “conventions,” the first relating to the establishment of an international court for the peaceful settlement of international disputes, the second relating to the laws of war on land, and the third relating to the laws of naval warfare, the purpose of the second and third conventions being to make more humane the practices of war.

By the terms of the agreement each of the twenty-six powers which signed the convention appoints not more than four persons “of recognized competence in questions of international law, enjoying the highest moral reputation,” to serve for six years as members of the court. They do not sit all the time at The Hague, but when two or more nations have a controversy to submit, they select arbitrators from among the members of the court and these try the case. The diplomatic representatives of the signatory powers at The Hague serve as a permanent council of the court. The court sits at The Hague in a building known as the Temple of Peace donated by Andrew Carnegie. The official name of the court is the “Permanent International Court of Arbitration,” but it is popularly known as the Hague Tribunal or Court.

The first case to come before the court was the case of the United States against Mexico in 1902, involving the disposition of a trust fund known as the Pius Fund raised by the Jesuits in the seventeenth century for the conversion of the California Indians. The claims of the United States were upheld by the court. Thirteen cases were decided up to 1914. Resort to the Hague Tribunal is optional, but since the establishment of the court many arbitration treaties binding the

parties to submit to arbitration have been concluded between the various powers. A second Peace Conference met at The Hague in 1907 for further consideration of questions relating to the settlement of international disputes and the regulation of warfare.\*

**321. Treaties.**—A treaty is an agreement or compact between two sovereign nations. By treaties the relations between the two nations are adjusted, matters in dispute are settled, and the rights and privileges of citizens of the respective nations in each other's territory are determined. The observance of treaties cannot be compelled except by retaliatory measures, or even war, in case of breach. Their sanction is found in the good faith of the nations concerned, reinforced by international public opinion.

The making of treaties is a very important and often a very delicate function. The consequences of unsatisfactory relations between nations may be so serious that too much pains cannot be taken to put the power to make treaties in the most competent hands.

The framers of the Constitution acted with great wisdom when they placed this high power in the hands of the President and Senate. The Constitution provides that the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur." Probably no provision in the Constitution has worked better than this. The Senate has occasionally rejected treaties submitted by the President, or insisted upon amendments, but their action in so doing has generally afterward met with popular approval.†

\* In 1921 the nations composing the League of Nations established at The Hague a "Permanent Court of International Justice" for the settlement of international disputes. This court does not supersede the Hague Tribunal. The United States, not being a member of the League, is not a party to the new court.

† The first Hay-Pauncefote treaty with Great Britain about the Panama Canal, submitted by Secretary of State John Hay in 1900, was rejected by the Senate to the great chagrin and disgust of Mr. Hay, whose feeling

Treaties are negotiated by the President, usually through the secretary of state, and the diplomatic representatives of the other countries concerned. Sometimes special representatives are sent abroad for the purpose. The general control of the negotiations is, of course, in the hands of the President, and no treaty can be made without his approval. The Senate may approve or reject a treaty in the form in which it was submitted, or may propose amendments, or may approve the treaty with reservations. Amendments or reservations must be accepted by the President and the foreign power concerned, in order to become effective. If so approved, the treaty goes into effect as modified.\*

The House of Representatives has no part in the making of treaties, but its co-operation may be necessary to make a treaty effective, as where an appropriation is necessary. If Congress should fail or refuse to make the appropriation, the treaty would be defeated. So far Congress has never failed to make the required appropriation.

**322. The Diplomatic Service.**—The United States maintains diplomatic relations with practically every independent country in the world. Diplomatic intercourse is carried on either through permanent representatives stationed in the various foreign countries, or through special representatives sent abroad in connection with specific subjects of negotiation. Diplomatic correspondence and negotiations with foreign governments are conducted by the Department of State under the general direction of the President.

The diplomatic service is now composed of three principal about the Senate on this account, became, we are told, "an obsession." When he submitted an amended treaty the next year it was almost unanimously ratified. As pointed out by his biographer, the Senate "were wiser than he," and the later treaty was a much better treaty.—Thayer, "Life of John Hay."

\* In the case of The Hague treaties of 1900 and 1909 and the Algeciras treaty of 1906 a reservation was appended that nothing in these treaties should cause or imply any departure by the United States from its traditional foreign policy. These reservations were accepted by the foreign powers concerned.

grades of officers: ambassadors, ministers plenipotentiary, and ministers resident, who rank in the order named. The highest rank in the diplomatic service is that of ambassador, whose full title is "ambassador extraordinary and plenipotentiary." His official establishment is called an embassy, and connected with it are a number of secretaries and *attachés*. Embassies are maintained at the capitals of the principal nations. In determining whether the representative to a foreign country shall be an ambassador or one of lower rank, the main consideration, of course, is the importance of the country in question, but the standing of the appointee in the particular capital is also considered. In diplomatic circles the privileges of the representative are largely determined by his rank rather than by the importance of the country he represents, an ambassador from a small country ranking above a minister of a great power. Consequently, the United States, in order to maintain the dignity of its representatives, is obliged to consider what other countries have done in the matter. If, therefore, the rank of the representatives of other countries is that of ambassador, that of the United States representative at the same capital will ordinarily be the same. The salary of an ambassador, under the present law, is \$17,500, without distinction.

The second rank of representative is that of minister plenipotentiary, or to give the full title, "envoy extraordinary and minister plenipotentiary." Representatives of this rank are sent to most of the less important countries. Most of these receive a salary of \$10,000, several, however, receiving \$12,000. To several of the smaller countries are accredited "ministers resident," at a salary of \$10,000.

The duty of a diplomatic representative is to represent his government and country in the country to which he is accredited. He receives and transmits official communications; reports to the secretary of state any matters of a political, economic, financial, commercial, or other character that may be of interest relating to the country to which he is sent; looks after the interests of American citizens; and in general does

what he can to serve his country and government. An important function of a diplomat is to foster friendly relations between the two governments and peoples. The proper performance of these duties requires a high order of ability and tact, to which some of our representatives have added to great advantage social and literary accomplishments. The actual negotiation of treaties and other agreements is now much less in the hands of the representative than formerly, owing to the establishment of direct and immediate communication with the home government through the cable service.

Diplomatic officers of foreign powers are exempt from all local jurisdiction, both civil and criminal. They cannot lawfully be served with process nor sued, without their consent, nor arrested for crime. This exemption extends not only to diplomatic officers themselves, but also to their *attachés*, secretaries, servants, and members of their households generally, and also to their dwellings and personal property and effects. By what is known as the principle of *extraterritoriality*, the residence of a foreign representative is considered as being a portion of the territory of his home country, and therefore not subject to local laws.

**323. Appointment, Reception, Dismissal, and Recall of Representatives.**—The President nominates, and by and with the advice and consent of the Senate, appoints, ambassadors, other public ministers, and consuls. He may also, on his own account, send special diplomatic representatives abroad in connection with particular subjects of negotiation. These are his personal representatives and are responsible to him alone. In selecting representatives to be sent to foreign countries, the President will consider not only the general fitness of the individual, but also his personal acceptability to the government to which he is to be accredited. No government is bound to receive a person who is not acceptable (*persona non grata*) to it. Should a foreign government send or propose to send to Washington an unacceptable representative, the President will decline to receive him, and the foreign power

will either send some one else or remain unrepresented. However, such cases rarely occur.

Upon his arrival at the capital in which he is to serve, a representative is formally received by the head of the government, presents his credentials, and is recognized as the representative of his government. By the Constitution it is made the duty of the President to "receive ambassadors and other public ministers." Under this provision, as well as under his general power of control over the foreign relations of the United States, the President may not only receive or refuse to receive representatives of foreign governments, but he may also recognize or withhold recognition of such governments themselves. The regular mode of recognizing the government of a country as its legal government is to receive its diplomatic representative. The President is thus given power to pass upon the independence of foreign states or the legality of foreign governments. It is often a matter of the greatest importance to a struggling government to obtain the recognition of important foreign powers and thus obtain a legal standing among the nations. Thus the refusal of President Wilson to recognize Huerta in 1913 as the president of Mexico was influential in his overthrow, while his recognition of Carranza doubtless helped to maintain the latter in office. Similarly, if the Southern Confederacy could have obtained recognition by France and Great Britain, it might possibly have gotten credit and help abroad that would have enabled it to win its independence.

The President may dismiss any foreign representative who for any reason has become unacceptable to him. In such a case the President may either ask the foreign government to withdraw its representative, or he may himself dismiss him. Several foreign representatives have been dismissed or their withdrawal asked for by the President, on account of meddling with political affairs or other improper conduct. Examples are: the French minister Genét in 1794; the British representatives, Sir John Crampton, in 1856, and Lord Sackville-West, in 1888; and the Austrian ambassador, Doctor

Dumba, in 1915. The President also has power to sever diplomatic relations in case of disagreement between the two countries, as when President Wilson dismissed Count Bernstorff, the German ambassador, in 1917, upon the announcement by Germany of its campaign of unrestricted submarine warfare. The severance of diplomatic relations is a step short of a declaration of war; whether war follows or not depends largely upon the subsequent conduct of the offending power. The President, of course, has power to recall our own representatives abroad, as where President Wilson in 1913 recalled our ambassador to Mexico because of his support of Huerta.

**324. The Consular Service.**—A consular officer is primarily a commercial agent appointed by the government to reside in a seaport or other important town of a foreign country to look after the commercial interests of the country appointing him, and to some extent also the personal interests of his fellow countrymen. The consular establishment of the United States is created and regulated by statute. Under the Constitution, consuls, like ambassadors, are appointed by the President, by and with the advice and consent of the Senate. By statute the President is authorized to provide for the appointment of inferior consular officers in such manner and under such regulations as he shall deem proper. Under executive order eligibility for appointments and promotions in the consular service are determined by examinations. Not infrequently consular powers are conferred upon citizens of the country in which the consular duties are to be performed; thus citizens of the United States sometimes serve in their home towns as consuls for foreign countries. But by a recent statute it is provided that every consul-general, consul, and, wherever practicable, every consular agent of the United States shall be an American citizen. A consular officer may serve only with the consent of the government of the country in which he is to serve. The consular system of the United States was reorganized in 1906. At present consular officers consist of consuls-general, consuls, vice-consuls, and consular assistants. The law provides for

five inspectors of consulates, with the rank of consul-general at large. Every consular office is required to be inspected at least once in every two years.

The powers and duties of consular officers are determined by treaty between the countries concerned and by the laws of the country they represent. In some countries, under the authority of treaties, United States consular officers exercise judicial authority in both civil and criminal matters over American citizens. Such special consular courts are held in China, Persia, and some other countries. Consular officers exercise no diplomatic powers, unless specially authorized to do so when there is in the country no authorized diplomatic representative of the United States.

A consul may exercise his office as such only by virtue of an *exequatur* from the country to which he is accredited, that is, a written recognition of his appointment and permission to act as consul. The *exequatur* may be revoked if the officer is guilty of improper conduct.

### Questions

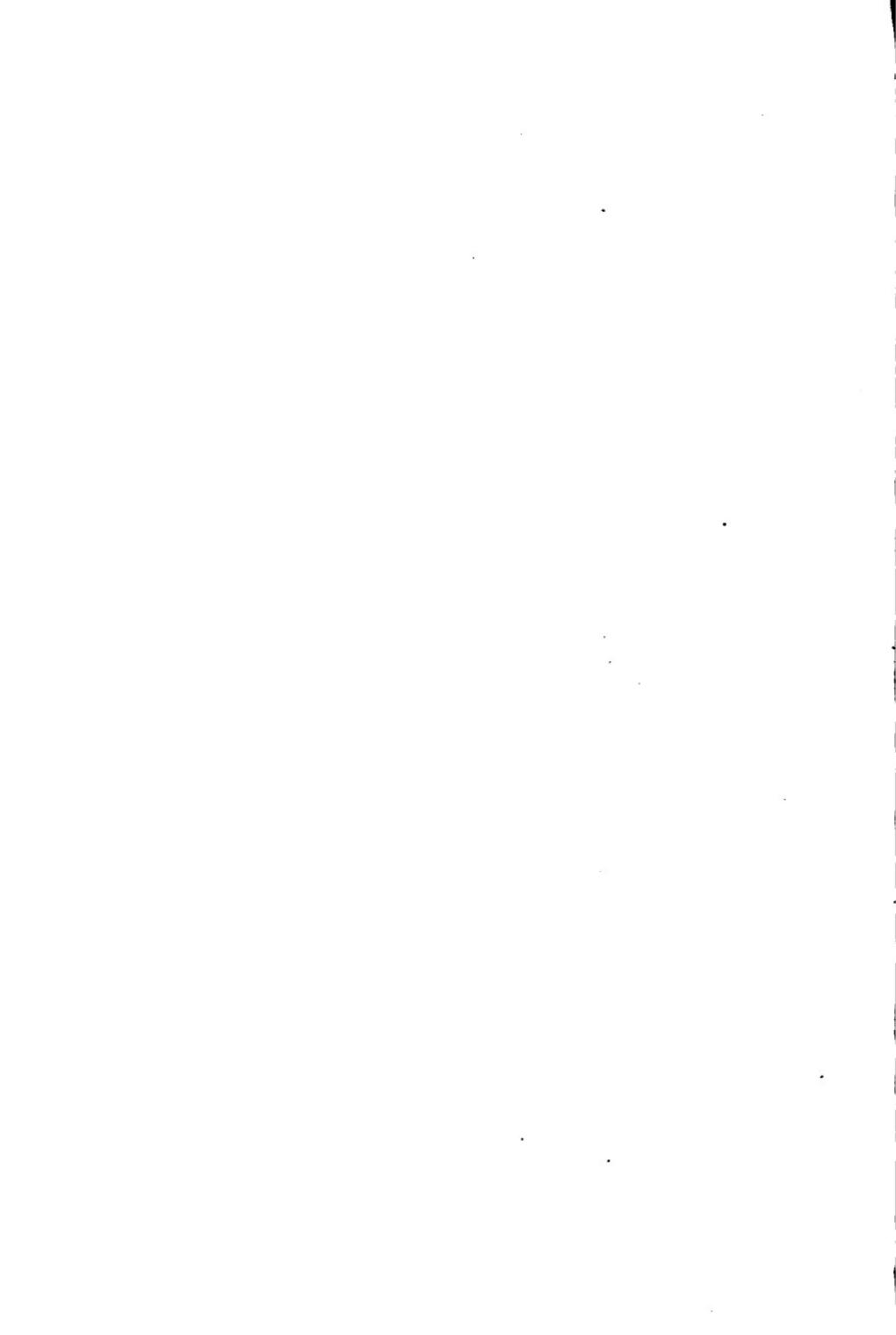
1. Which government, state or federal, has charge of the foreign relations of this country?
2. What is international law? How is it enforced? Name some of its sources. May the rules of international law respecting war be made or changed during war?
3. Mention some of the cases in which the United States has taken part in international affairs.
4. What kind of alliances was it that Washington warned the people of this country against? Was the participation of the United States in the World War a departure from Washington's advice? Is Washington's advice appropriate for the United States to-day?
5. What was the occasion upon which the Monroe Doctrine was announced? State the several principles constituting the Monroe Doctrine and explain how the doctrine has contributed to the continued independence of the republics of Central and South America. State how the doctrine was extended by President Roosevelt.
6. Give a brief account of the Hague Conferences and Court.
7. How are treaties made? If the Senate disapproves of a treaty nego-

tiated by the President, what should it do? May the Senate ratify a treaty with reservations?

8. If a state law forbids the owning of real estate in the state by aliens, but a treaty with France provides that the citizens of each country may own real estate in the territory of the other, may a Frenchman own real estate in the state?

9. Name the three grades of diplomatic officers. How are they appointed? If France and Great Britain send ambassadors to Mexico, what should be the rank of the representative of the United States? What are the duties of diplomatic representatives?

10. What are the duties of consular officers?



# *A*

## OUTSTANDING PROBLEMS AND TOPICS FOR STUDY

These problems and topics are designed to stimulate creative thinking and to develop in some measure a problem-solving attitude toward matters of government. The questions at the end of each chapter were framed with the purpose of discovering what the students have memorized from the text and with the purpose of strengthening the student's understanding of the text, thus keeping clearly before him the principles and ideals of our government.

These questions raise new issues for discussion and research and call out new views. They are intended to encourage the student to form his opinions and judgments through observation and experience rather than to accept without question inherited or traditional idealizations of others.

The students will show a diversity of opinion as they attack these problems and that is precisely what we should wish. They are not living in a world already finished, in which civic life is static and settled; they are dealing with social institutions in a state of change. Let the students approach these problems with the realization that they are to be the citizens of to-morrow.

### CHAPTER I

1. Outline the achievements of the people of the United States and characteristics of the institutions that have made ours a great nation. Do other nations excel us in any worth-while things?

2. Does the individual exist for the state or the state for the individual? Discuss and give historical examples for each theory of the state.
3. How would it be possible for a government to be nominally a democracy but in reality an oligarchy? How may a government which is a democracy in reality be either monarchical or republican in form?
4. Set down six governments, list the evidences you can find in various governments, of autocracy, of democracy, of communism, of socialism.
5. Some one has said that the English Constitution is written in the hearts of the people, but that ours is written in documentary form simply for reference by our representatives or by the courts. Is there any truth in the statement? Are there any advantages under one not to be had under the other?
6. Does government by the numerical majority always bring the best results? Does the minority ever represent the best thought of the people which in the end becomes the best thought of the majority? Would it be possible to have representation according to the ratio which party groups bear to one another—proportional representation in fact, so that minorities defeated in elections would be represented? Would it be desirable?

## **CHAPTER II**

1. Trace the development of liberty in England down to the adoption of the American Constitution.

2. Discuss the principal compromises which were embodied in the Constitution and the results any of these compromises have had on later American history.

3. Write a short theme setting forth the views of the leading statesmen at the Constitutional Convention, indicating in particular our indebtedness to James Madison as the "Father of the Constitution" and Alexander Hamilton as the "Promoter of its adoption."

4. Discuss the ideals and general principles of government embodied in the Constitution. Considering all the great changes in American life during the past hundred and thirty years, would you say that these ideals and principles are still fundamental in America to-day?

## **CHAPTER III**

1. Our Constitution has been called inflexible. In what sense is it inflexible? How have later amendments to it met the changing

conditions in our social and industrial life? In what sense then have we a changing Constitution?

2. Should the Constitution ever embody social legislation as well as the permanent principles which are fundamental?

3. For your own use in the course make an outline of the Constitution which will show the articles or sections which have to do (1) with the choosing of the law-making body, the chief executive, and the Supreme Court judges; (2) with the powers of the three branches over the affairs of the people; (3) with the limitations imposed on the state or national government; (4) with the manner by which the Constitution itself may be amended.

4. Select the provisions of the amendments to the Constitution which constitute a bill of rights safeguarding certain liberties against legislation by either the state or federal government. List the liberties safeguarded. Discuss the wisdom of having these rights so protected by supreme fundamental law.

#### CHAPTER IV

1. Note the age requirements in the Constitution for senator, representative, and President. How old are some of the congressmen you know? Why are there so few young men in Congress? The average age of the framers of the Constitution was about forty-three. Hamilton and Madison, the most active, were thirty and thirty-six, respectively. Dayton was twenty-seven. Discuss the implications of this fact.

2. What advantages are there in having two houses of Congress? What disadvantages?

3. Before the Civil War it was not uncommon for a senator to resign to become the governor of his state. The opposite practice now prevails. How do you account for this change?

4. Why may a senator have more power than a representative? What seems to be the general opinion as to the results of the present method of electing United States senators?

5. Many organizations in recent years have established publicity bureaus at Washington. Why do they choose Washington as a place for these bureaus? What is your attitude toward organizations attempting to influence public opinion?

6. Should a congressman represent primarily the interests of his locality or of the whole country? Should he represent special interests or the people at large? Should he stand for the principles of government as he understands them or for those which his constituents demand?

## CHAPTER V

1. "The President of the United States rules but does not reign; the King of England reigns but does not rule; the President of France neither rules nor reigns." Explain this quotation.
2. Bryce in his "American Commonwealth" has a chapter, "Why Great Men Are not Elected Presidents of the United States." Debate this.
3. The Cabinet is the President's political family. It is a well-recognized principle in practice that the Cabinet is not only of the same party as the President but of the same faction of the party. What would be some of the advantages to the people if the candidates for President should announce their cabinets before the election?
4. What should be the relation between the Cabinet officers and the President? Should a member of the Cabinet resign if he fails to agree with the President? What has been customary?

## CHAPTER VI

1. If the Executive Branch of our government were responsible to the majority party in Congress, we should have the Ministry System as in England. How would this accord with our whole plan of government?
2. On the other hand, what would be the advantages of a presidential Cabinet directly responsible to the people as is usually the case in Executive Departments of the States? What occurs when the President and the majority of Congress are not of the same party?
3. Outline the leading bureaus in each Executive Department. Do you find any reasons for the reorganization of these departments?
4. Debate the advantages and disadvantages of the "Spoils System."

## CHAPTER VII

1. The Supreme Court of the United States is the court of last resort. What is meant by this? Why has this court the respect of our people? Give the names of some of the men who have been justices of the Supreme Court.
2. Review the powers of the federal courts. They are sometimes criticised for substituting injunction for legislation. What does this mean?
3. Why does it take so long to obtain action in the United States courts? What is the difference between law and justice? May dilat-

tory action tend to bring about injustice? If it is possible, visit a local court and observe its operation.

## CHAPTER VIII

1. What are some of the dangers of over-centralization?
2. The states retain all powers not delegated to the federal government or prohibited them by the Constitution. To what extent has your state failed to take advantage of these residual powers?
3. In a country as large as ours why must there be ample provision left for each state to meet its own problems?

## CHAPTER IX

1. To what extent does the criticism of state governments in this chapter apply to the national government as described in the preceding chapters?
2. To what extent should there be uniformity in the social legislation of the states? *i. e.*, divorces, child labor, minimum wage, etc.
3. When Arizona petitioned Congress for entrance into the Union as a state President Taft opposed the petition on the ground that the proposed State Constitution was not constitutional because it contained provisions for the initiative, referendum, and recall. Arizona struck these provisions from the Constitution and was duly admitted. Shortly thereafter, these same provisions were written into the Constitution by the state. What does this indicate as to the power of the national government over the form of the state government, after the state has been admitted?

## CHAPTER X

1. Who is the governor of your state? Of each of your neighboring states? Compare their salaries, lengths of term and political affiliations.
2. What is the House of Governors? Who called the first Conference of Governors? What is its purpose?

## CHAPTER XI

1. Compare State Courts with National Courts (1) in length of service and remuneration of the judges, and (2) in the esteem with which the courts are held by the people.
2. How is it determined which court should try a specific case?

3. Should judges of the state courts be elected by the people or should they be appointed? In which case would they be more likely to be independent of fluctuating public opinion and of special interests?

## **CHAPTER XII**

1. Make a complete outline of your city government. In what respects does it resemble the organization of the national government? Of a business organization?

2. Discuss the merits of the Mayor-Council plan of city government, the Commission Form, and the City Manager plan.

3. To what extent is the modern city a corporation? To what extent is it a state?

4. Classify cities in your state (cities, towns, and villages, or cities of first, second, or third class).

5. It has been suggested that the mayor or manager of a city should be a trained official and not necessarily a resident of the city. What would be the advantages of this plan?

## **CHAPTER XIII**

1. In a large American city the sheriff of the county arrested the police who were participating in election frauds. Why would the police power of the state support the sheriff rather than the chief of police in the city?

2. Cite instances of a conflict, if any, between the officials of your county and the officials of your city.

3. How do the political parties overcome the conflict of authority in county and city?

## **CHAPTER XIV**

1. List the ten leading cities in the United States and compare them as to area, population, surroundings, and form of government. Do you discover any features in common? Any that are vastly different?

2. A city is a corporation largely organized for business. In what specific ways is the city government the most important to you?

3. What are the chief enterprises of your city?

4. What organizations interest themselves in the government of your city? Why should they? Why should you?

## CHAPTER XV

1. Many people say "What does it profit a man if he gain religious, political, and personal liberty (*i. e.*, liberty of body), and have not the economic independence to enjoy these liberties?" Discuss this fully.
2. Make a list of all the rights to which you feel entitled. Compare your list with those of your classmates.
3. Compare these with the list in the Declaration of Independence and first ten amendments to the Constitution.
4. How do these rights relate themselves to the duties of life (your rights become my duties and vice versa)?
5. Discuss the proposition, "All men are equal."

## CHAPTER XVI

1. How many people were naturalized at the last session of your local court? To what extent were these tests inadequate to prove their future value to America? How were they initiated into their American citizenship?
2. Is good citizenship a matter not only of knowing our political theories, but also a matter of personal conduct? Discuss this.

## CHAPTER XVII

1. Trace the growth of the privilege of voting from colonial days, when religious or property qualifications prevailed, to the present. Why were women kept so long without the right of suffrage? What other changes have come about in the last half century in respect to women's participation in the varied activities of American life?
2. Has a minority any right (except in Bill of Rights) or function except to try to become the majority?
3. The validity of majority rule lies in its practicality, even though certain minority groups may not be represented. Can you think of a plan by which the minority groups can have representation?
4. Analyze the ancient expressions, *vox populi*, *vox dei*. Cite instances in which public opinion, as expressed, has proved contrary to public welfare.

## CHAPTER XVIII

1. Why should every man or woman be a member of some political party?

2. On what principle should he or she vote independently of party?
3. Should the list of contributors to campaign funds be published before election?
4. Discuss the political boss. Would the election of a political boss to a public office affect his position?
5. Analyze the statement: There is too much invisible government in the United States.
6. Why are special interests more effective than the public at large in party control?

### CHAPTER XIX

1. Do such measures as the initiative, referendum, and recall correct the mistakes in a representative democracy, which are due to inherent weaknesses in the system? To what extent are these measures realizing their purpose?
2. It is becoming increasingly difficult to get able men to run for office. Why is this? How do these "progressive" measures affect the problem of securing able men to run for office?
3. Make a list of recent inventions. How have they broken down the self-centred localities of half a century ago and made us members of an extensive society? How have various new social and economic interests extensive in range tended to make us less thoughtful of our local political duties? What dangers are there in this?
4. How does the frequency of elections provided by these "progressive" measures affect the voters? Why is there an increasingly large number of people who do not vote?

### CHAPTER XX

1. List the aims of government as stated in the Preamble to the Constitution. List opposite each what has been done to realize these aims.
2. James J. Hill is quoted as having said that if the legislation of Congress and of all the state legislatures were unchanged for ten years, we should see such prosperity as to astound the world. How is business efficiency affected by ever-changing regulatory legislation? What should be the limitations of government legislation?
3. Make a list of recent legislative acts that tend to subordinate the freedom of the individual to the public welfare, as understood by the promoters of such acts. How do you account for this growing tendency to control individual action?

4. All laws should be obeyed. What is necessary if a law is to be obeyed?

## CHAPTER XXI

1. Unrest, sometimes revolution, is caused by high taxes. To what extent is the increasing rate of taxation, local, state, and national, in the United States a danger threatening our government?

2. A large proportion of our wealth consists of investments in non-taxable securities. Is this a good thing? How does it affect taxes?

3. List the ways in which our government raises its income. Which of these seem to have the greater advantage?

4. What plans are being proposed for economy in public expenses? Why does extravagance in running the government characterize democracies?

5. Some advocate that all taxes should be raised from a land tax. Examine this proposal to ascertain its elements of strength and weakness.

## CHAPTER XXII

1. Primitive people bartered, or traded articles they did not want, or that they had a surplus of, for other articles. Explain why as civilization progressed money as a medium of exchange came into use.

2. How did the division of labor and the rise of commerce increase the use of money?

3. Relate how in this country we came to adopt a gold standard. Under what conditions would a bi-metallic system work?

4. When it takes forty dollars to buy what we could obtain before for twenty dollars, why do we say money is cheaper?

5. Several nations have, since the World War, a currency much depreciated, or almost worthless. How has that come about?

6. Suppose our government should issue paper money far beyond its power to redeem in gold. What would occur? Who profits by a depreciated currency that is made legal tender by the government—the creditors, or the debtors?

7. Explain how banks made it possible to do the larger part of our business without the actual money changing hands. How may one engage in various business transactions and not carry money with him? How does one start an account at a bank without depositing currency?

8. In fact, with a highly perfected banking system, operating through clearing-houses, do we need to have large amounts of money in definite form?

9. What substitutes for money have been proposed? Discuss the advantages and disadvantages respectively of these propositions?

### CHAPTER XXIII

1. Carlyle once declared that when the printing-press was invented democracy was inevitable. Discuss how cheap printing put the control of public opinion into effect in government.

2. It is not so much the quantity of popular government that counts as its quality. Since public opinion so largely determines the quality of government, what can be done to make opinion more intelligent and more discriminating?

3. Do we think for ourselves? Do we suspend judgment till we weigh the evidence? Whose beliefs do we accept? Do we say we agree with people to please them, or through fear of them, or through pride in being classed as one of them? Can an honest and permanent belief be established that way? Is it better to try to strengthen the beliefs we have inherited, or to discover some way of getting rid of them?

4. Who is likely to be the most intelligent voter in a democracy, one who uncritically accepts opinions ready-made for him, or one who critically examines opinions in the light of the facts? What, then, beyond making schools available to all is the further function of education in a democracy?

5. One meaning of democracy in America is best expressed in the words, "equality of opportunity." We strive to maintain equality of rights and of opportunities and to give every one a chance to achieve to the limit of his capacity irrespective of class. How are our public schools, including the higher institutions, in accord with this ideal?

### CHAPTER XXIV

1. As economic life develops beyond the self-sufficient local community, how does transportation assume increasing importance?

2. Labor-saving machinery has enabled man to produce far in excess of the demand. What then are some of the problems of the producer?

3. With certain parts of the country and certain regions of the world not producing enough goods of different kinds to supply their needs, why is the problem of distribution economically the most important? Why is the nation more concerned over a railroad strike than over any other strike?

4. Trace a box of oranges from a local fruit-grower in southern

California to the consumer in a distant town or city. Ascertain approximately the price which the grower received for the whole box and the price you would have to pay for it. Apply a similar comparison to several other articles of common use. How many separate middlemen derive a profit? How much of the retail price goes to the producer and how much goes for transportation?

5. Discuss the cold-storage services which middlemen render. Why do people demand foods which are out of season when such foods are luxuries and the quality not so good? If we all stopped eating articles when the price is exorbitant, what would occur?

## CHAPTER XXV

1. Should production and consumption be regulated by such economic laws as supply and demand or by legislation?

2. Some people think that the government has been given more functions than it can use effectively. They cite the effects which social and industrial legislation has had on the tax rates. What do you think about this?

3. The public is interested in having a maximum production and low prices; the manufacturer is interested in that amount of production which will give him the highest net profit. Is there a solution to this conflict of interest?

4. A living wage covers the minimum necessities of life. What constitutes a satisfactory saving wage? How does the increasing of wages affect wants? How do wants affect willingness to work? How does standard of living (things one is accustomed to having) affect what man considers a living wage or income? One writer maintains human desires are in continual conflict with the realities of life, for, while wages increase in *arithmetical* progression, our wants increase in *geometrical* progression. What do you think about this?

5. List the important provisions for protecting labor, for protecting capital, for protecting the public. Which of these three should take priority over the others? Which in reality is least protected? One well-known authority advocated the organization of the public for protection against all special interests. What events in recent years tend to justify such a policy?

## CHAPTER XXVI

1. What rights may an individual claim against the demands of society?

2. "A man's home is his castle," is a statement from English com-

mon law. Are there any forms of modern social legislation which tend to abrogate this law?

3. The state is chiefly concerned with securing the greatest good to the greatest number. How must this affect the state's actions toward certain individuals who seem to be against the general good? How do these individuals feel toward social regulation which directly affects them?

4. To what extent do you think poverty is a curable social disease?
5. What is the difference between vice and crime?
6. What should be the state's attitude toward a criminal offender—retaliation, punishment, correction, or re-education?
7. What may be said as to the merit of the indeterminate sentence? Of the prison as a school? Of the asylum as a hospital?
8. What is being done in your state to make every individual safe for society?

## CHAPTER XXVII

1. Would you rather live in a large city, a small city, or on the farm? Discuss the advantages and disadvantages of each.
2. Discuss the foreign sections in larger cities in relation to the problem of making citizens.
3. Is there a housing problem in your city? Is anything being done to solve it? What percentage of the people in your city own their own homes? How does ownership of homes affect community life?
4. In 1790 about 96 per cent of the people lived on farms. Philadelphia was the largest city with a population of 31,000. To-day about one-half of the population lives in cities and towns. How do you account for this concentration of population? What problems are raised by congestion of population in large cities?

## CHAPTER XXVIII

1. What excellences does each foreign group in America manifest? What contribution has each group made that enriches American life?
2. Edmund Burke said: "One cannot indict a whole nation or a race." Does the question of undesirability concern itself with races or with individuals?
3. Which races assimilate most readily? What are some of the barriers to assimilation?
4. Is the United States under a moral obligation to continue the open door?
5. "Westward Racial Movements Have Come to an End" was the

title of an article by a leading author in 1922. What do you think about this?

### CHAPTER XXIX

1. List the products in which America leads the world. What are the advantages and disadvantages of an increasing accumulation of wealth?
2. What has been the effect of undue accumulation of wealth on the character of the people? Are there any evidences that wealth and prosperity will affect us as they have affected other people?
3. Discuss this statement: America is passing from the stage of exploitation to the stage of conservation of resources.

### CHAPTER XXX

1. Show how we have grown from isolated colonies to our present boundaries. Indicate on the map the extent of each accession of territory and tell when and under what conditions the territory was acquired.
2. What is the nature of the territory acquired since 1898? Are these new accessions of such a nature that they will ultimately be material for states?
3. How have these extensions of territory into the Pacific and among the West Indies affected our traditional policy in respect to participation in world affairs?
4. Why may we consider the Panama Canal a gift to civilization?
5. Why have the Latin-American countries questioned our application of the Monroe Doctrine? How have some of them construed our growing interests southward?

### CHAPTER XXXI

1. In the last national budget 93 per cent of the public funds was given to wars, past, present, and future. Discuss what might be done with this money, if nations would cease preparing for war.
2. Can we in safety cease preparations for war so long as other nations maintain aggressive attitudes and maintain large navies and armies?
3. When you consider the destructive weapons of modern warfare, do you think it possible that civilization may destroy itself if nations continue to wage war? Some say: "We have always had wars, and therefore always shall have wars." How can you refute such an argument?

4. What provisions are there for fighting other enemies of the country such as disease, illiteracy, etc.?

## CHAPTER XXXII

1. Outline the arguments that were used against the Union proposed by the Constitutional Convention in 1787. How many of these arguments are used against the plan of an international association or league with a constitution?

2. If we consider the conditions of communication and transportation in 1788, how far was Georgia or Massachusetts from Philadelphia in terms of modern conditions? What were some of the practical difficulties then in a union of distant states? Do the same difficulties prevail in the world to-day? In what sense is Japan to-day nearer to the United States than Georgia was to Philadelphia a hundred years ago? What are the difficulties to be overcome in bringing about a world parliament for world affairs?

3. Discuss the Monroe Doctrine with reference to the principle of government by consent of the governed. If the principle works for one-half the world, would it work for the whole world?

4. In the final analysis, on what does America's world power depend?

# CONSTITUTION OF THE UNITED STATES

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes<sup>1</sup> shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.<sup>2</sup> The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

<sup>1</sup>Partly superseded by the 14th Amendment, p. 210.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3. 1. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years; and each senator shall have one vote.<sup>1</sup>

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.<sup>1</sup>

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold<sup>d</sup>and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. 1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

<sup>1</sup> See the 17th Amendment, p. 211.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. 1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6. 1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION 7. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent,

together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. 1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;
3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;
4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
6. To provide for the punishment of counterfeiting the securities and current coin of the United States;
7. To establish post offices and post roads;
8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
9. To constitute tribunals inferior to the Supreme Court;
10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;
16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and
18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

**SECTION 9.** 1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.
4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.<sup>1</sup>
5. No tax or duty shall be laid on articles exported from any State.
6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.
7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
8. No title of nobility shall be granted by the United States: and

<sup>1</sup> See the 16th Amendment, p. 211.

no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SECTION 10. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II

SECTION 1. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who

have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.<sup>1</sup>

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. 1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he

<sup>1</sup> This paragraph was in force only from 1788 to 1803. It was superseded by the 12th Amendment, p. 209.

may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION 2. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; —to all cases affecting ambassadors, other public ministers and con-

suls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;<sup>1</sup>—between citizens of different States,—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. 1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainer of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

## ARTICLE IV

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws

<sup>1</sup> See the 11th Amendment, p. 208.

thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such servce or labor may be due.

SECTION 3. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

## ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby,

anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names,

*GEORGE WASHINGTON, President and Deputy from Virginia.*

*New Hampshire.*—John Langdon, Nicholas Gilman.

*Massachusetts.*—Nathaniel Gorham, Rufus King.

*Connecticut.*—W m . S a m u e l Johnson, Roger Sherman.

*New York.*—Alexander Hamilton.

*New Jersey.*—William Livingston, William Patterson, David Brearley, Jonathan Dayton.

*Pennsylvania.*—Benjamin Franklin, Robert Morris, Thomas Fitzsimons, James Wilson, Thomas Mifflin, George Clymer, Jared Ingersoll, Gouverneur Morris.

*Delaware.*—George Read, John Dickinson, Jacob Broom, Gunning Bedford, Jr., Richard Bassett.

*Maryland.*—James McHenry, Daniel Carroll, Daniel of St. Tho. Jenifer.

*Virginia.*—John Blair, James Madison, Jr.

*North Carolina.*—William Blount, Hugh Williamson, Richard Dobbs Spaight.

*South Carolina.*—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

*Georgia.*—William Few, Abraham Baldwin.

Attest, WILLIAM JACKSON, Secretary.

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States pursuant to the fifth article of the original Constitution.

### ARTICLE I<sup>1</sup>

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

### ARTICLE II

A well regulated militia, being necessary to the security of a free State the right of the people to keep and bear arms, shall not be infringed.

### ARTICLE III

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

### ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

<sup>1</sup> The first ten Amendments were adopted in 1791.

## ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

## ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

## ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

## ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## ARTICLE XI<sup>1</sup>

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

<sup>1</sup> Adopted in 1798.

ARTICLE XII<sup>1</sup>

The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots, the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

ARTICLE XIII<sup>2</sup>

SECTION 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted,

<sup>1</sup> Adopted in 1804.

<sup>2</sup> Adopted in 1865.

shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

#### ARTICLE XIV<sup>1</sup>

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation

<sup>1</sup> Adopted in 1868.

of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

### ARTICLE XV<sup>1</sup>

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

### ARTICLE XVI<sup>2</sup>

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

### ARTICLE XVII<sup>3</sup>

The Senate of the United States shall be composed of two senators from each State, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.

### ARTICLE XVIII<sup>4</sup>

1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the im-

<sup>1</sup> Adopted in 1870.

<sup>2</sup> Passed July, 1909; proclaimed February 25, 1913.

<sup>3</sup> Passed May, 1912, in lieu of paragraph one, Section 3, Article I, of the Constitution and so much of paragraph two of the same Section as relates to the filling of vacancies; proclaimed May 31, 1913.

<sup>4</sup> Passed January 16, 1919; proclaimed January 29, 1919.

portation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is prohibited.

2. The Co ; and the several States shall have concurrent power to enforce thi cle appropriate legislation.

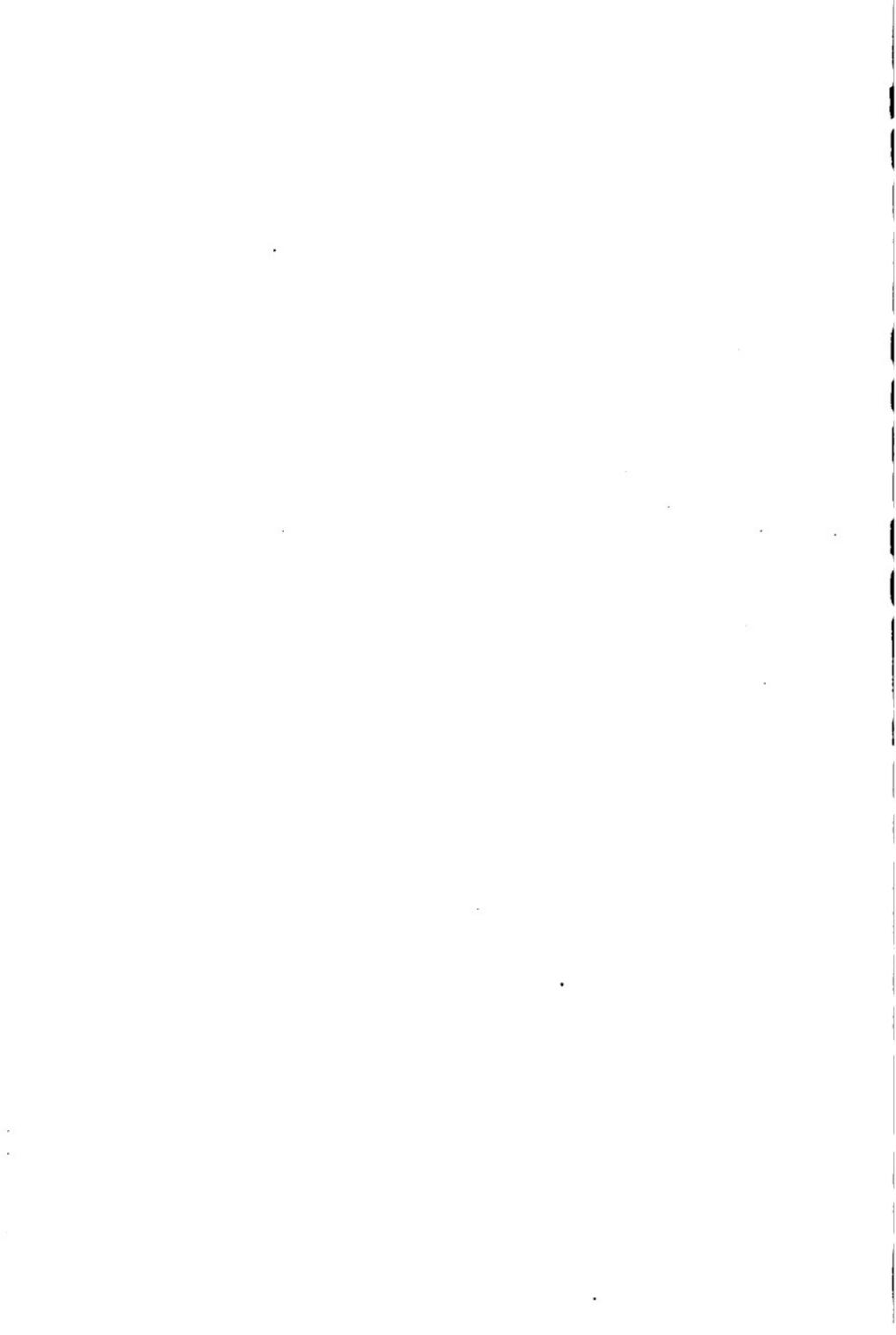
3. This artic all inoperative unless it shall have been ratified as an amendme the nstitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

## ARTICLE XIX<sup>1</sup>

1. The rights of the citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of sex.

2. Congress shall have power, by appropriate legislation, to enforce the provisions of this article.

<sup>1</sup> Declared in force August 26, 1920.



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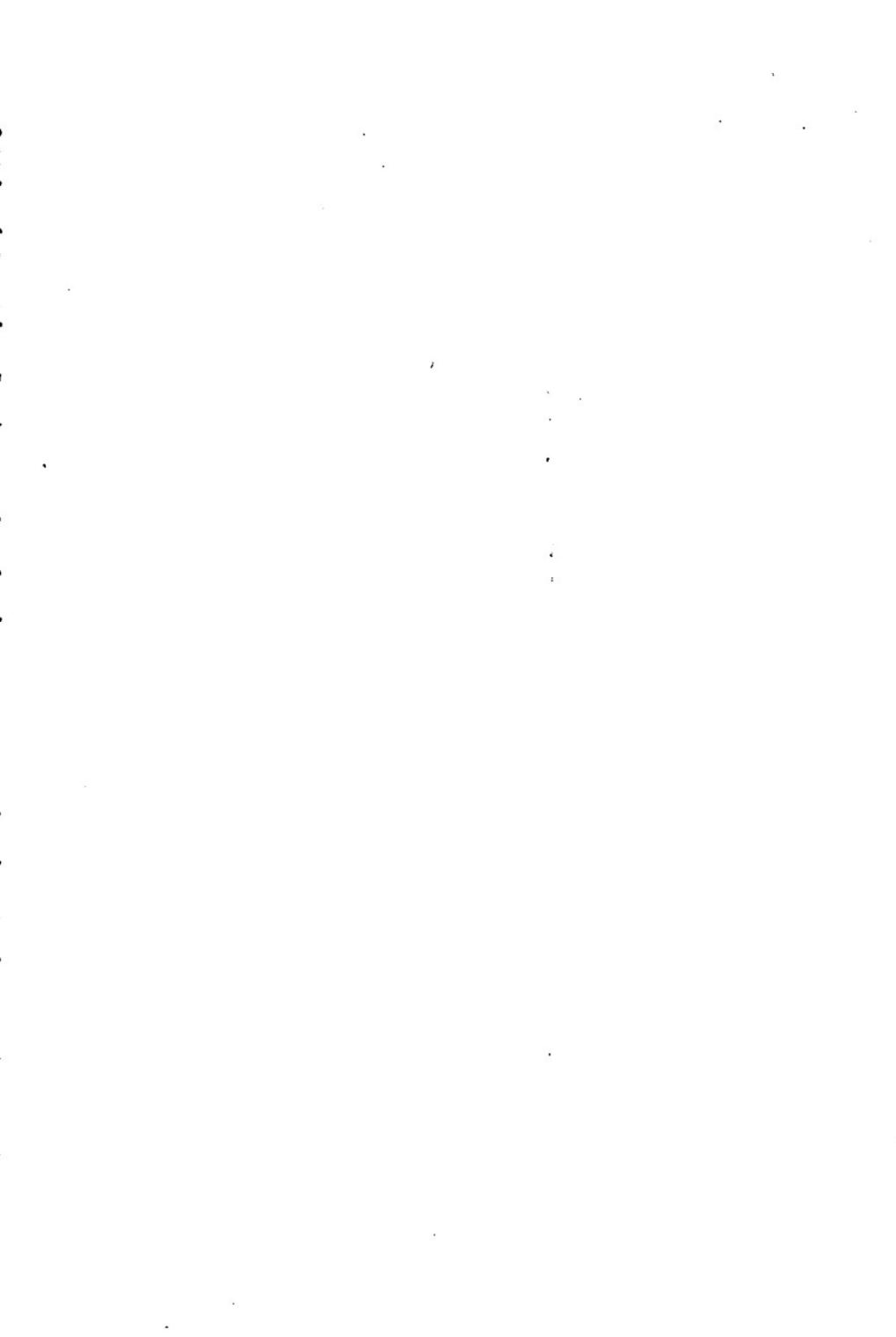
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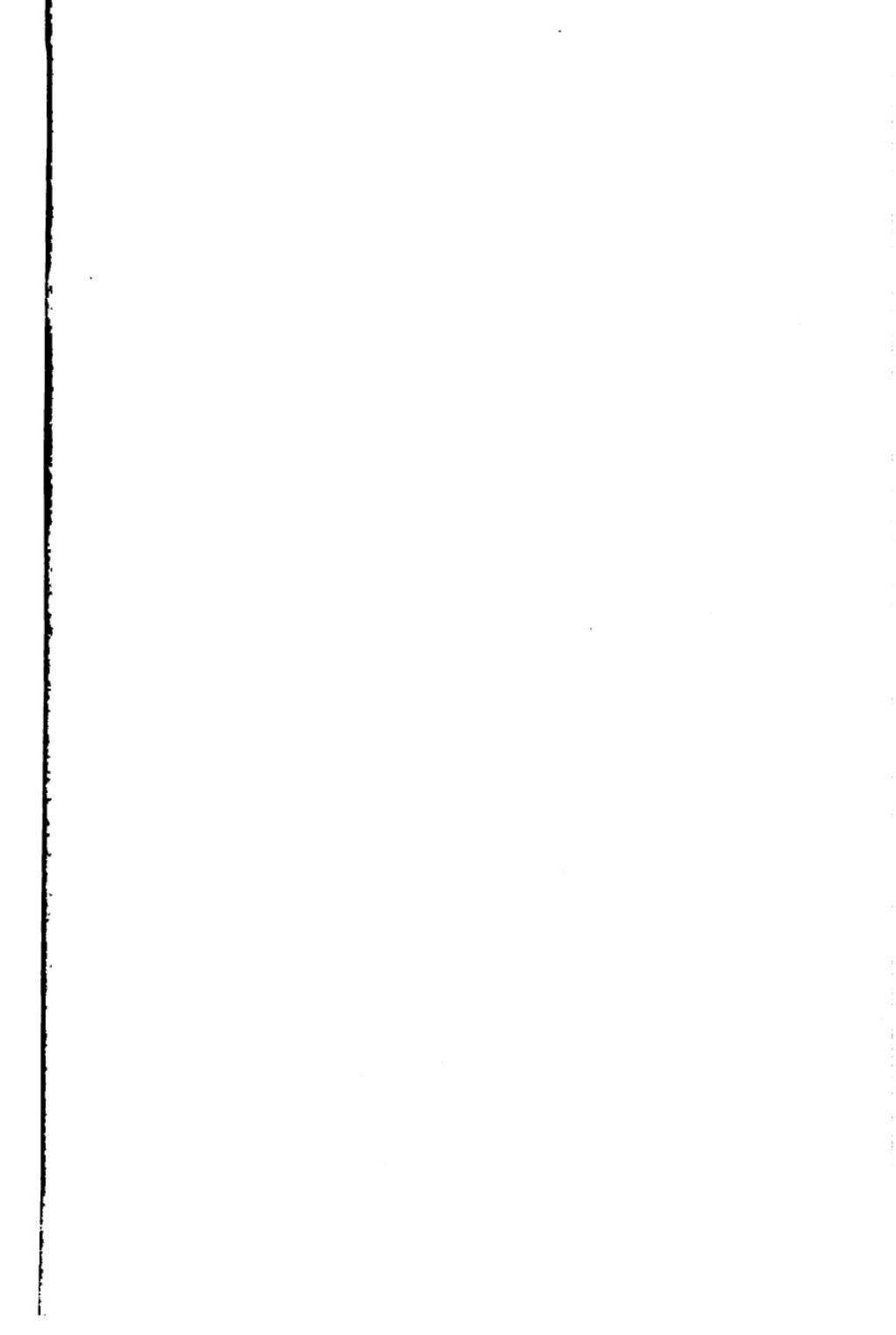
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